

# DUAL CITIZENSHIP, BIRTHRIGHT CITIZENSHIP, AND THE MEANING OF SOVEREIGNTY

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## HEARING BEFORE THE SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED NINTH CONGRESS FIRST SESSION

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SEPTEMBER 29, 2005

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## DUAL CITIZENSHIP, BIRTHRIGHT CITIZENSHIP, AND THE MEANING OF SOVEREIGNTY

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THURSDAY, SEPTEMBER 29, 2005

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON IMMIGRATION,  
BORDER SECURITY, AND CLAIMS,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2 p.m., in Room 2141, Rayburn House Office Building, the Honorable John Hostettler (Chair of the Subcommittee) presiding.

Mr. HOSTETTLER. The Subcommittee will come to order. Good afternoon.

United States citizenship is a considerable privilege. Citizens may vote, carry a U.S. passport and are entitled to a full range of rights under the Constitution. The purpose of this hearing is to examine both birthright citizenship and dual citizenship and the effect that they have on our sovereignty as a Nation.

Currently, the United States grants citizenship to nearly every individual born on U.S. soil. This policy—based on an interpretation of the 14th amendment is sometimes referred to as “birthright citizenship.”

The 14th amendment states that, “All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside.” It does not, however, provide citizenship in a blanket fashion to literally every person born on U.S. soil. Rather, it confers citizenship only to those persons “subject to the jurisdiction” of the United States.

Courts have long recognized that children born to ambassadors and foreign diplomats do not fall under the jurisdiction of the United States. This raises important questions about whether the authors of the 14th amendment intended for individuals born in the U.S. to be granted citizenship even when the parents have little or no connection to the United States.

This question is critically important in light of the Yaser Hamdi case. Hamdi, who was captured in Afghanistan fighting for the Taliban, was born in Louisiana to Saudi parents who were in the U.S. on temporary visas. He returned to Saudi Arabia as a small child and maintained little connection to the United States.

Yet, because he was born on U.S. soil and considered a U.S. citizen, he is granted rights and benefits that a noncitizen combatant would not have been granted.

Birthright citizenship is also a major issue in the context of illegal immigration. The Center for Immigration Studies estimates that 383,000 children are born each year to illegal alien mothers, accounting for nearly 10 percent of all births in the United States. Many aliens come to the United States illegally to give birth, knowing that their citizen children will be eligible for a large array of benefits, and will some day be able to petition on their behalf for them to become legal permanent residents.

It is not clear that the authors of the 14th amendment intended to confer citizenship to the children of persons who have no clear allegiance or connection to the United States.

In recent years there has been a trend toward obtaining multiple nationalities or citizenship. Because citizenship is largely based on notions of allegiance, it is important to closely examine the consequences of this growing trend, in particular, when a person is naturalized as a U.S. citizen, he or she takes an oath which says in part, "I hereby declare on oath that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen."

Despite the serious nature and explicit terms of the oath, many individuals keep their previous nationality by retaining and using their foreign passport, voting in foreign elections, running for office in a foreign country or even joining the armed forces of their former nation. For example, Manuel de la Cruz immigrated from Mexico and became a U.S. citizen in the 1970s. Recently, he was elected to the state legislature in Mexico and declared loyalty to the Mexican Republic.

Having dual nationalities certainly has its benefits. It eases travel by allowing individuals to avoid cumbersome visa requirements. But we should examine closely whether these conveniences outweigh the potential problems that can arise from conflicting loyalties. The U.S. Department of State, which does not formally recognize dual citizenship, aptly noted that "dual nationals owe allegiance to both United States and the foreign country."

In the past few years a number of nations have passed laws allowing its citizens to become citizens of other nations. This has invariably fed the trend of individuals retaining dual loyalties.

In *Afroyim v. Rusk* the Supreme Court held that the U.S. Government may not revoke someone's citizenship without his or her consent. However, we should still examine whether there are ways to improve the likelihood that naturalized citizens will assimilate and show loyalty to the United States.

At this time, I turn now to Members for opening statements. The Chair recognizes the gentleman from Texas for purposes of an opening statement.

MR. SMITH. Thank you, Mr. Chairman. Let me say at the outset that I know you tend to discourage opening statements by other Members in an effort to expedite the hearing, and I have not sought to ask for your indulgence in many, many weeks, if not months. So thank you for recognizing me for an opening statement today.

I have to say that I have a special interest in the subject at hand. When I was Chairman of this Subcommittee a number of

years ago, we had two hearings on this particular issue which were very informative, just as today's hearing promises to be, as well. So I have had a longtime interest in the subject, and I very much appreciate your willingness to raise the issue again today.

Let me begin my comments with a question. In what way is America like Barbuda, Lesotho and Tuvalu. The answer is that they are all countries that automatically give citizenship to the children of illegal immigrants. Nearly every industrialized country in the world requires at least one parent to be a citizen or legal immigrant before a child born there becomes a citizen. Not a single European country automatically grants citizenship to the children of illegal immigrant parents. Many other countries have repealed their U.S.-style citizenship practices.

Why is birth citizenship a concern? Last year over one-half of all births in Los Angeles, our second largest city, were to illegal immigrants. One poll found that most of the women said that the reason they entered the U.S. illegally was because of automatic citizenship. Today, 42 percent of births to immigrants are to illegal immigrant mothers, one out of every ten births in the United States.

Once an illegal immigrant gives birth in the U.S., it is unlikely they will ever be deported and they can then sign up for Federal, State and local benefit programs, courtesy of the America taxpayer. This granting of automatic citizenship flows from a misinterpretation of the 14th amendment, as the Chairman pointed out in his opening statement. It was drafted after the Civil War to guarantee that the recently freed slaves rightfully received full citizenship rights. When it was enacted in 1868, there were no illegal immigrants in the United States because there were no immigration laws until 1875, so drafters of the amendment could not have intended to benefit those in our country illegally.

One law professor has referred to, "the offense to common morality and common sense of conferring citizenship on children whose only connection to the United States is that their mothers crossed the border in time to give birth here."

Legal experts disagree as to whether a constitutional amendment or a Federal statute is needed to eliminate birth citizenship. However, there are three reasons why Congress can and should act. Number one, no Supreme Court case has dealt directly with the offspring of illegal immigrants who have given birth in the United States. Two, the Constitution expressly gives Congress the power to decide national immigration policies. And three, during the debate on the 14th amendment in 1866 the Senator who was the author said it would, "not, of course, include persons born in the United States who are foreigners."

Congress is long overdue in making sure the 14th amendment is correctly interpreted. Illegal immigration has become a crisis in America. Our borders are overrun. More than 12 million people live in the United States illegally. Passing a law to eliminate birth citizenship would defer illegal immigration and reduce the burden on the taxpayer of paying for Government benefits that go to illegal immigrants.

Mr. Chairman, again I look forward to the testimony today and thank you for recognizing me for an opening statement.

Mr. HOSTETTLER. I thank the gentleman from Texas. Without objection, all Members' statements will be made a part of the record.

At this time, I would like to turn to the introduction of members of our panel—very distinguished panel today. First of all, Dr. Stanley Renshon is Professor of Political Science at the City University of New York and Coordinator of the Graduate Center's Interdisciplinary Program in the Psychology of Social and Political Behavior. He is also a certified psychoanalyst, which I believe would lead a vast majority of Americans to suggest that you are especially qualified to testify before Congress.

Dr. Renshon has been a Visiting Scholar and Senior Fellow at Harvard University. He also served as a faculty member for New York City's "Top 40" program, providing executive training for top-level city officials. He has published 12 books and is the author of many articles and essays on Presidential politics, leadership and political psychology. He has appeared a number of times on national and international television and radio shows.

Dr. Renshon received his Ph.D. in Political Science at the University of Pennsylvania, was a Postdoctoral Fellow at Yale University, and completed his graduate work in clinical psychology at Long Island University.

Dr. John Fonte joined the Hudson Institute in March, 1999 as Senior Fellow and Director of the Center for American Common Culture. Dr. Fonte has previously been a Visiting Scholar at the American Enterprise Institute and served as Senior Researcher at the U.S. Department of Education. He is currently on the board of the American Council for Trustees and Alumni.

He has written numerous articles and essays appearing in national and international newspapers, journals and magazines, and has co-edited a book. His ideas on democratic sovereignty and international law were cited in the New York Times Magazine's "Year in Ideas" as among the most noteworthy of 2004. Dr. Fonte received his Ph.D. in World History from the University of Chicago and B.A. and M.A. in History from the University of Arizona.

Dr. John Eastman is a Professor of Law at the Chapman University School of Law and he also serves as Director of the Claremont Institute's Center for Constitutional Jurisprudence. Prior to joining Chapman University's Law School he served as Law Clerk to Associate Justice Clarence Thomas at the U.S. Supreme Court and to Judge Michael Luttig at the U.S. Court of Appeals for the Fourth Circuit. His past experience includes practicing law at the national law firm, Kirkland & Ellis, and serving as the Director of Congressional and Public Affairs at the U.S. Commission on Civil Rights during the Reagan administration. He was the 1990 Republican nominee for Congress in California's 34th district.

He earned his J.D. from the University of Chicago Law School, where he graduated with high honors. He holds a Ph.D. and M.A. in Government from the Claremont Graduate School. Dr. Eastman completed his B.A. in Politics and Economics at the University of Dallas and recently has served on the panel for the Claremont Institute with less qualified members of that panel. We appreciate that.

Peter Spiro is Associate Dean for Faculty Development at the University of Georgia School of Law and also serves as the Dean



and Virginia Rusk Professor of International Law. Mr. Spiro's experience in academia includes 10 years at Hofstra University's School of Law as Tenured Professor and Associate Dean. His articles and contributions have been published in several law reviews and major publications, and he is a frequent speaker in academic and policy forums.

Mr. Spiro previously served as International Affairs Fellow at the Council on Foreign Relations. Mr. Spiro is also a former Law Clerk to Justice David Souter of the U.S. Supreme Court and has worked in various positions at the National Security Council, U.S. Department of State and the Carnegie Endowment for International Peace.

He earned his law degree from the University of Virginia School of Law and his Bachelor's degree, magna cum laude, from Harvard College.

At this time, will the members of the panel please rise to take the oath?

[Witnesses sworn.]

Mr. HOSTETTLER. You may be seated.

And let the record reflect that the witnesses answered in the affirmative.

At this time, before we take testimony from the panel, I now yield to the gentlelady from Texas, the Ranking Member, for purposes of an opening statement.

Ms. JACKSON LEE. Thank you very much Mr. Chairman, thank you for your indulgence.

We were held up in a meeting that proceeded over the 2 o'clock hour, but I do want to ask unanimous consent that my statement, in its entirety, be admitted into the record.

Mr. HOSTETTLER. Without objection.

Ms. JACKSON LEE. Then I would like to just offer these few thoughts as I listen to very informed and, I hope, instructive witnesses. This is an interesting topic to take up at this time in the backdrop of so many large issues that we must confront here in America. But I do believe in what we call here in this Congress the regular order, which means that we must proceed deliberatively to assess a number of issues.

As I listen to the witnesses, let me reflect and remind you that even though we've had Hurricane Katrina and Rita, we also have a broken immigration system. Might I also say that in times of devastation and tragedy, this Congress has risen to the occasion. Chairman Sensenbrenner and Ranking Member Conyers, the Chairman of this Committee and myself, along with other Members did pass what we call an Immigration Hurricane Katrina Relief bill that took into consideration some of the status changes and difficulties of those who are in immigrant status, that might have been confronted by the horrors of Hurricane Katrina, and I hope, ultimately, Hurricane Rita.

But today I think that we are in the midst of a hearing that brings no solution to much. We really need comprehensive immigration reform. We need to address the questions of individuals who have been here in this country, working taxpayers who really are owed at least an opportunity to their right to citizenship.

It is interesting that we are raising a hearing about birthright and dual citizenship when the framers of the Constitution did not really define citizenship. The acquisition of United States citizenship by birth and by naturalizing depended on State laws until the enactment of the Naturalization Act of 1790. The Naturalization Act of 1790 established a definition for citizenship by naturalization, but it did not define citizenship by birth. Isn't that interesting, because most everyone had at that time come from somewhere else?

Interestingly enough, even through the 1800's and 1900's, the 20th century, we did not determine that it was a relevant enough question to address, when I might imagine that even though we would assess that most immigration was legal immigration, I imagine that much was not; and therefore individuals were born with parents who were undocumented, and they probably became great and wonderful contributors to the economy, to the society and to the intellect of this Nation.

Prior to the Civil Rights Act of 1866 and the 14th amendment, African Americans were not considered citizens of the United States. In fact, I was less than a person at that time. And I reflect on that frequently in the definition of our history in this country. For a long period of time, we were what we call second-class citizens.

So I wonder and hope that the hearing today will convince those who may be questioning the value of a dual citizenship and citizenship of those who may be undocumented, the wrong direction that they take this country. Dual citizenship simply means that an individual comes to this country and is allowed to keep the citizenship of their other country.

I would wonder whether or not there is sufficient documentation to suggest that anyone here with a dual citizenship is a threat to our security, is not contributing to our society, or is less of an American because they happen to retain their citizenship in another country—maybe for family reasons, maybe for other legitimate reasons.

And so this hearing today, though I do believe in regular order, probably is not at the high point on our list of priorities with all of the various needs that our country is now facing and particularly some of the great needs that we're facing with immigration reform.

Mr. Chairman, I hope that we will look forward and be forward thinking and I hope that we will begin deliberation on a number of immigration reform bills that have been filed, including my Save America Comprehensive Immigration Act, H.R. 2092, so that we can begin to look at really fixing the problem and have the distinguished panel coming before us with concrete solutions to real problems.

I don't consider dual citizenship and the citizenship of a child born in the United States to undocumented parents as a real problem for America.

I yield back.

Mr. HOSTETTLER. We thank the gentlelady.

We will now turn to testimony from our panel. I'll remind our witnesses that we have a series of lights, and the time for those lights, until you see the red light, is about a 5-minute time period.

Without objection, your full written testimony will be made a part of the record, and if you can contain your comments as close to that 2—5-minute time period, that was not Freudian, Dr. Renshon—if you can contain it to that 5 minutes, we would be most appreciative so we can get questions from the Members of the Committee.

At this time, Dr. Renshon, you're recognized.

**TESTIMONY OF DR. STANLEY A. RENSHON, PROFESSOR,  
CITY UNIVERSITY OF NEW YORK GRADUATE CENTER**

Mr. RENSHON. Thank you, Mr. Chairman. Thank you very much, Members of the Committee. I'm deeply honored, truly, to come here and talk. I do so not so much as a representative or invitee of the majority party, but rather as an American who both studies and loves this country and is concerned about its future.

The focus of my remarks here today is that the core issue facing American immigration policy is our ability to integrate tens of millions of new immigrants into the American national community. The heart and foundation of that community consists of our emotional attachments, a warmth and affection for, and appreciation of, a pride in, and a commitment and a responsibility toward this country's institutions, way of life, and fellow Americans.

Over the past four decades our capacity to help immigrants and Americans to become more integrated and attached has been compromised by two powerful centrifugal forces. One is the institutionalization of the view that race or ethnicity is and ought to be the principal vehicle of American national identity. The other is the view that Americans ought to trade in their parochial national attachments in favor of a more cosmopolitan transnational identity. Our Government, it is said by some, should allow and even encourage this. However, I think this country should only do so if it wishes to encourage civic suicide.

Citizenship is a legal term and refers to the rights and responsibilities that become attached to a certified member of the community. Nationality, which is what I'm talking about, is a psychological term and that refers to the emotional ties, core understandings about the world, and common experiences that bind Americans together. Of course, it is entirely possible to have the rights of a citizen, but feel little emotional attachment to the country that provides them. Citizenship, however, without emotional attachment, is the civic equivalent of a one-night stand.

Traditionally, America has always bet that immigrants' self-interest in coming here can be leveraged over time into genuine attachment, and in the past, we've won that bet primarily because of firm expectations that immigrants would integrate and a concerted effort to help them do so. Today, we have neither.

Multiple attachments, of course, are a fact of life. We are fathers to our children and children to our parents, husbands, professors and so on. Americans, we are all these things and more, but that doesn't mean that we can always avoid making choices about which are primary. We can't easily be observant Muslims and Jews at the same time, nor can we equally hold profound emotional attachments to several countries. Dual citizenship, especially when it entails the active participation in the political life of an immigrant or

a citizen's foreign country of origin, leads to conflicts of interest, attention and, most importantly, attachment.

Of course, immigrants have feelings regarding their countries of origin, but a strong psychological and civic case can be made that they owe and we should help them develop their primary focus to this country. My research suggests—and I have a new book coming out on it in 2 weeks, I think. My research suggests that 151 countries, including the United States, allow some form of dual citizenship. Most, with the exception of the United States, strongly regulate it without, however, outlawing it. They do so no doubt for the same reasons that lie behind the four policy suggestions that are in my prepared statement, concerns with the viability of citizen attachment in their national communities.

Americans would be surprised and, I think, extremely disturbed to learn that it is entirely legal, and in some circles preferred, that American citizens vote in foreign elections, serve in governmental positions, take part in the army of foreign countries. These practices do nothing to advance the integration of citizens in this country.

Allow me then two quick points before I conclude. First, the impact of dual citizenship falls disproportionately on the United States. India and Mexico, for example, allow dual citizenship but neither has to worry about the civic impact of millions of dual citizens arriving in their countries. The United States does. Of the over 22 million immigrants to the United States between 1961 and 2003, over 80 percent were from dual-citizenship-allowing countries. That's over 17.5 million, and it doesn't count the estimated 8.5 million illegal immigrants, 85 percent of whom come from countries that support dual citizenship and also doesn't take into account the children of both groups nor the Americans who are already here, who would be eligible for dual citizenship in the second, third or later generation.

Second, and importantly, immigrant-sending countries have discovered the self-interested advantage of having large groups of nationals become American citizens while at the same time retaining strong emotional ties to their home countries. They do so with the direct and express expectation that these dual citizens will contribute "sustained economic and political contributions in the name of patriotism and hometown loyalty." That's a quote, it's not my quote, and it comes from Alejandro Portis at Princeton, who's a very well-respected immigration scholar.

Just what are these political contributions that they're expected to make? Let me give you one example before leaving. In 2001, Juan Hernandez, a former University of Texas professor was named as the first American to serve in a Mexican President's cabinet. His role was specifically to organize and mobilize Americans in the United States of Mexican descent. And what was he mobilizing them to do? Well, he actually went on Nightline and made it quite clear, he wants to, and I quote, "have them think Mexico first. I want the third generation, the seventh generation, I want them all to think Mexico first."

Americans, on the other hand, might well be excused if they wonder why one of their fellow citizens is legally entitled to work for

a foreign government advocating that Americans put other countries first.

Mr. Chairman, it's no surprise that other countries try to maximize their self-interest through their immigrants here. The real surprise is that some Americans want to help them take advantage of this.

The question before us is whether we should encourage their success, the foreign governments' success, at the cost of our own civic, cultural institutions. I believe that the sensible answer to this, based on psychological theory, civic responsibility as well as the needs of our national community, is a very clear and direct "no."

Thank you.

Mr. HOSTETTLER. Thank you, Dr. Renshon.

[The prepared statement of Dr. Renshon follows:]

PREPARED STATEMENT OF STANLEY A. RENSHON

REFORMING DUAL CITIZENSHIP:  
INTEGRATING IMMIGRANTS INTO  
THE AMERICAN NATIONAL COMMUNITY

Statement of Stanley A. Renshon,  
Professor of Political Science, City University of New York, Psychoanalyst  
Richard E. Estrada Fellow, The Center for Immigration Studies

The House Subcommittee on Immigration, Border Security & Claims

Hearing on:

"Dual Citizenship, Birthright Citizenship, and the Meaning of Sovereignty"  
September 29, 2005 Room 2141- Rayburn House Office Building

Statement

Mr. Chairman and members of the committee, I am deeply honored to be invited here to speak with you today regarding a subject vital to America's long-term national security and civic well being.

I do not come here as an invitee of the majority party, but as an American who both studies and loves this country and is concerned about its future. I am by first training a political scientist, by second training a clinical psychologist and by third training a psychoanalyst. I've been invited here today. I suspect, because I have new book coming out in two weeks entitled, *The 50% American: Immigration and National Identity in an Age of Terror*.

The focus of the book, and the foundation of my remarks here today is that *the* core issue facing American immigration policy is our ability to integrate tens of millions of new immigrants into the American national community. That ability turns largely on our success in helping immigrants form and develop emotional bonds with this country—its way of life, its ideals, its people, and its institutions. Government certainly can't mandate such attachments, but it clearly can either facilitate or alternatively, impede them.

Over the past four plus decades, our capacity to help immigrants become integrated into the American national community has been comprised by two powerful centrifugal forces. One is the institutionalization of a view that race or ethnicity is, and ought to be, the principal vehicle of American national identity. The other is the view that Americans ought to trade in their parochial national attachments in favor of a more cosmopolitan, transnational identity. Advocates of this view embrace the growing incidence of dual citizenship and argue that America should be more "welcoming" by helping immigrants retain and further develop emotional ties to their "home" countries. Our government, it is said, should allow and even encourage this. However, in my view, this country should only do so if it wishes to encourage civic suicide.

## Prologue

Conduct a small experiment: Ask your friends and colleagues how many countries worldwide permit their citizens to also be citizens of one or more other countries. Frame your question by asking whether it might be a few, less than a dozen, several dozen, or even more. Aside from puzzled looks, my bet is that the most frequent answer will be a few or less than a dozen.

Then, continue the experiment by asking more specifically how many countries do they think would allow their citizens to do all of the following: take out one or more other citizenships, swear allegiance to a foreign state, vote in foreign elections, run for office in another country while at the same time being a citizen in good standing in their "home country," win or be appointed to office in another country and serve while still a citizen in good standing in their "home country," join another country's armed forces while a citizen of their "home country," or fight in another country's army even if that country were hostile to the interests of the "home" country." Chances are the looks you receive will range from puzzled suspicion that you can't be serious to severe disbelief.

Press them to give a number and almost without fail, if you elicit a number at this point, it will be either very small or nil. Then, to take the next step in the experiment ask if they are aware that the United States is the only country in the world to allow its citizens, natural or naturalized, to do all of these things.

It is likely that their disbelief at this point will express itself as open astonishment and a refusal to believe that you could be serious. And to complete the experiment, further inform them that a number of academic, legal, and ethnic activists welcome these developments, and are critical only of the fact that the United States hasn't gone farther, faster, to loosen the ties that bind Americans to their country and to each other instead of helping them to develop identifications and emotional ties to larger and, in their view, more democratic communities.

The facts that form the basis of this experiment are the subject of this analysis.

The American national community faces a critical issue of which most of its citizens are largely unaware. It is an issue that goes to the heart of what it means to be an American. It also has significant consequences for our national security and political well-being in the post 9/11 world, and the emotional commitments that sustain them. It is the issue of dual citizenship and multiple national attachments.

America remains an immigrant's beacon. Immigrants come to the United States, legally and illegally, at the rate of around a million a year. There are now over 34 million foreign-born persons living here, the largest number in American history.<sup>1</sup> Unlike the past, many immigrants to the United States now arrive from countries with very different cultural, religious, psychological, and political traditions. A natural question therefore arises as to how well these millions of new immigrants are finding their place in American society and in the American national community.

This is *not* solely a matter of economic mobility, as many discussions of immigration seem to assume, but of psychological and cultural integration. Of course, Americans hope that immigrants will find their economic footing here. However, becoming a real part of the American national community consists of more than earning a paycheck or paying taxes. The heart of the American national community, its foundation, consists of emotional attachments — a warmth and affection for, an appreciation of, a pride in, and a commitment and responsibility toward this country's institutions, way of life, and fellow Americans. These central psychological features describe a much misunderstood and unjustly maligned concept and set of basic elements of the American national community — patriotism. And, therein lies the core of the problem with dual citizenship and multiple national attachments.

The 9/11 attacks made Americans more aware of their common fate. It has also brought renewed focus on issues of national integration, attachment, and immigration. The national security implications of national attachment are very real, but the relationship of national attachment and integration to the political and cultural well-being of this country are equally important.

## What Is Dual Citizenship?

At its most basic level, dual citizenship involves the simultaneous holding of more than one citizenship or nationality. Citizenship is a legal term and refers to the rights and responsibilities that become attached to people by virtue of their having been born as, or having become,

recognized or certified members of a state community. Nationality is a psychological term that refers to the emotional ties and core understandings about the world and common experience that bind members of a group together. Nationality in most, but not all, cases underlies and is the foundation of citizenship.

It is possible, of course, to have the rights of a citizen but feel little emotional attachment to the country that provides them. In that case citizenship is primarily instrumental, sought for the advantages it confers. But a community requires more than instrumental membership and a what's-in-it-for-me calculus to function and prosper. Emotional attachments provide a community with the psychological resources to weather disappointments and disagreements, and help to maintain a community's resolve in the face of historic dangers. Emotional attachment and identification are the mechanisms that underlie sacrifice, empathy, and service.<sup>2</sup> *Citizenship without emotional attachment is the civic equivalent of a one-night stand.*

Multiple attachments are, of course, a fact of life. We are fathers to our children, and children to our parents. We are husbands, professors, psychoanalysts, Jews, New Yorkers, and Americans. We are all these things and more, but that doesn't mean we can add to our attachments indefinitely, or avoid making choices about which are primary, and under what circumstances. Nor does it mean that we can add new parallel fundamental attachments without consequences.

We can be fathers and spouses, but we can't maintain a primary attachment to two spouses at the same time. We cannot easily be observant Muslims and Christians at the same time. Nor can we equally hold the profound attachments that nationality represents to several countries at the same time. Some kinds of psychological attachments are simply incompatible; others require a choice about which will be primary.

Dual citizenship, especially when it entails active participation in the political life of an immigrant's home country, leads to conflicts of interest, attention, and attachment. Of course, immigrants have feelings regarding their countries of origin, but a strong case can be made that they owe their primary focus and commitment to the country that is now their chosen home. And the United States, in turn, owes them the effort to ensure that they can become integrated into the American national community.

There are many ways to become a dual citizen. You can be born in the United States to a foreign national. You can be born abroad to a mixed nationality couple, one of whom is a U.S. citizen. You can become a



naturalized American citizen, but your “home country” ignores that fact, which many do. You can temporarily lose your home-country citizenship by becoming a naturalized American citizen, but reclaim it at any time through simple procedures — a form of *de facto* dual citizenship. You be a citizen of a country that has a dual citizen arrangement with one country (Spain), or a group of countries (European Union), who in turn see their nationals in the United States as partially their citizens. Or you can be the minor child (under 18 or 21) brought to the United States by your parents, become naturalized, inform your home country that you have chosen your home country’s citizenship, but go ahead with American naturalization, too.

While there are many ways to become a dual citizen, the questions that matter are how many countries allow it and how many Americans are, or could become, dual citizens. The answer to both questions is startling.<sup>3</sup> The numbers suggest this is an issue of major proportions. There are currently 151 countries, including the United States, that allow some form of multiple citizenship in one of the six ways I have outlined above. It is a number that is likely to grow as the relatively few remaining countries that send large numbers of their nationals abroad but don’t allow dual citizenship recognize the advantages of maintaining and even encouraging the attachments of their emigrants to their “home countries.”

What matters, of course, is not only how many countries allow dual citizenship, but how many possible dual-citizenship nationals come to the United States. The United States, remember, is the destination for the largest number of immigrants worldwide, year after year, and decade after decade. No other country even comes close to the United States, both in being a preferred destination and in the numbers of immigrants this country takes in.

With that in mind, consider that in the decades beginning in 1960 and extending through 2003, the United States took in almost 22 million immigrants, over 81 percent of whom were from dual-citizenship countries. Of immigrants from the top-20 sending countries to the United States in the years 1994-2002, an average of over 90 percent were dual-citizen immigrants. Of the estimated 8-10 million illegal immigrants in the country in 2002, 85 percent were from dual-citizenship countries. Their children too, become dual citizens.

The enormous number of prospective dual citizens in the United States raises the most profound questions about the basis on which this country was built and has developed for the past 229-plus years. The viability and integrity of the American national community de-

pends on the emotional attachments of its citizens. Beliefs in civic values like “democracy,” “justice,” or “tolerance” (i.e., the American Creed) are not enough, by themselves, to bind people to this country. Americans — if they are to provide real support for their national community, its institutions, way of life, and fellow members — must feel emotionally attached to all these elements.

This attachment need not always be front and center in people’s lives. However, in relation to other nationality, ethnic, or racial ties, it is important that it at least be primary, or first among equals. Dual citizenship, and the growing attempt to use it by foreign governments for their own purposes, weakens that crucial community attachment.

Most other countries strongly regulate the rights and responsibilities of dual citizenship without outlawing it. They do so, not doubt, for the same reasons that lie behind the suggestions I will make shortly here — concerns with the viability of citizen attachments to *their* national communities. It is therefore possible to both permit and regulate dual citizenship. And that is precisely what I propose.

As it now stands, the United States is among the most, if not *the* most, permissive country allowing dual citizenship in the world. It has no regulation whatsoever of whether its citizens can vote, serve in the government of, or fight for a foreign government. They can do so without consequences of any kind. And, as is generally the case with modern American immigration policy, these practices have not been publicly debated or approved.

In the sections that follow, I outline a series of recommendations for reforming some elements of the growing incidence of dual citizenship in this country, along with a rationale for each proposal. It is clear that Congress has the power to regulate citizenship and naturalization, so long as such laws are uniform and adhere to the equal protection clause. Congress could, if it thought it wise, limit Americans’ ability to exercise political rights in other countries, or even naturalize elsewhere.<sup>4</sup> From the standpoint of integrating America’s diverse immigrant populations into the national community, it would seem to be a wise step.

America’s current *laissez faire* approach to multiple citizenships can be reformed in ways consistent both with the psychological fact of multiple attachments and with fostering primary ties with the American national community. It can be reformed in ways that don’t deny immigrant feelings for their homeland countries, but that also doesn’t negate the importance of developing strong integrated and emotionally connected ties to this country.

## Dual Citizenship and Foreign Attachments

The reform of dual citizenship in the United States actually consists of two elements, one foreign, the other domestic. The first concerns potential or actual dual citizen involvement in the political process of their "home" countries. Among the questions that need to be addressed in this category are: What ought to be done about American citizens voting, holding office, or serving as advisors to foreign governments?

The second asks what ought this country do in relation to a potential or actual dual citizen *in* the United States in relation to the American political community. Among the questions that need to be addressed in this category are: What should be done regarding Americans who maintain dual citizenship but serve in public service or policy-making capacities in this country? Should a dual national be allowed to serve as President of the United States or as a Supreme Court justice? While the idea may seem novel, it is not at all far-fetched. As more and more dual citizens find their place in American society, it is increasingly likely that they will find their way into positions of responsibility and power. This issue has been raised indirectly by attempts to amend the Constitution to allow naturalized citizens run for the presidency; the questions raised by multiple national attachments in American political life, however, are much more pervasive than a single office. As more and more dual citizens and potential dual citizens take their place in political institutions, the questions raised here will be increasingly relevant. It is preferable to give this matter some thought before it becomes a matter of national urgency.

As Peter Schuck points out, "Americans seem to worry much more about the divided loyalties of those who are nationals of other states and wish to naturalize in the United States than they do about the loyalty of American citizens who choose to naturalize in other countries while retaining their American citizenship (as other states increasingly permit them to do)."<sup>5</sup> In reality, both sides of that coin are at issue.

The "foreign" dimension of dual citizenship raises three critical public policy issues for Americans. First, should American citizens be able to vote in foreign elections? Second, should American citizens be able to serve in, represent, or advise a foreign government? Third, should American citizens be permitted to serve in foreign military forces? As of today, all three are wholly legal in the United States. Whether they are advisable, given the worry over integrating unprecedented numbers of new

immigrants every year into the American national community, is another matter.

## Voting in Foreign Elections

Voting is one of the essential elements of citizenship and a critical part of belonging to a political community. It both reflects and gives voice to one's stake in the community, while at the same time symbolizing one's membership in it. The United States has historically taken this set of citizen responsibilities and entitlements very seriously.

There are many bodies of evidence that support the centrality of voting for citizenship and community membership. The Constitution and American courts<sup>6</sup> enshrine voting. The expansion of voting rights has been a critical element of American democratic practice beginning with the country's earliest history of expanding the right to non-property holders, through struggles for women's suffrage, and more recently the post-15<sup>th</sup> Amendment struggle for African Americans. Voting could hardly be more central to American community membership.

Voting is also at the heart of many discussions of civic responsibility and laments regarding its decline. It is the centerpiece of a major dimension of the study of political science both in this country and abroad. And, finally, it is central to the process through which immigrants become citizens. We ask immigrants to await an application and review process and a five-year period of time in this country before they can exercise the right to vote.

Bruce Fein writes that, "Approximately 60 countries permit expatriates or migrants to vote via absentee ballots, including Venezuela, Columbia, Brazil, and Honduras."<sup>7</sup> Immigrants from these countries to the United States number in the millions. However, not everyone thinks that having Americans vote in foreign elections is a problem. In an otherwise thoughtful analysis, Schuck argues that it is "unproblematic ... so long as this participation does not embroil the United States in unwanted disputes with the other country that involve situations in which the voter subordinates the interests of the United States to the other country...."<sup>8</sup> Schuck does not specify the kind of circumstances he has in mind, but they presumably involve situations where the U.S. and country X have a disagreement and American nationals from that country vote in a way consistent with their home country's interest and not those of the United States.

The basic problem with Schuck's position is that the conflicted attachments that underlie his concern about American citizens voting in foreign elections leading to conflicts have equally worrisome implications for Ameri-

can *domestic* politics and the community attachments that underlie them. American citizen nationals from country X may be tempted to vote in ways consistent with their home country's interests in measures or votes brought before the American people for resolution. Country X, for example, may want its languages to be the language of instruction at school, whereas American community interest would be for all its members to be fluent in English. Multiple and conflicted attachments are a problem at home, as well as abroad.

The enormous increase in the number of countries allowing dual citizenship is closely associated with the recognition by foreign governments that there are economic and political advantages to doing so. Princeton sociologist Alejandro Portes has written, "Consulates of Mexico, Columbia, El Salvador, Guatemala, and the Dominican Republic in areas of their concentration of their respective nationalities in the United States have taken to promoting the acquisition of U.S. citizenship or at least permanent residence of their nationals. From these policies, it is clear that sending governments do not want their immigrants to return, but rather to achieve a secure status in wealthy nations... *from which they can make sustained economic and political contributions in the name of patriotism and home town loyalty.*"<sup>8</sup>

Those countries realize that voting is one principal way of organizing and extending their influence and of reestablishing and reinforcing immigrant ties to their "home" countries. And voting does not entail simply marking a ballot or pulling a lever — it is preceded by a campaign. When Mexico was considering whether or not to encourage dual citizenship for its nationals abroad (primarily in the United States), it conducted a study of the possible benefits. That study envisioned a scenario in which "Thousands of Mexican election officials have fanned out across the United States to supervise the balloting, which caps a campaign in which candidates have barnstormed through Mexican population centers, lambasting United States immigration, narcotics, and other policies unpopular in Mexico."<sup>9</sup>

Up until 2005 the numbers have not been as high as the Mexican government study scenario envisioned. However, part of the reason for this is that Mexican nationals had to return to Mexico in order to vote. No more. In June 2005, the Mexican government passed a law allowing absentee voting for its nationals abroad.<sup>11</sup> A few days later a story in the *New Times* carried the headline "Mexican Expatriates in U.S. Cheer Vote Law."

<sup>12</sup> There is no doubt that the United States has and will become more of a campaign arena for foreign governments.

Because the election process also involves extensive campaigning, this too is a means of reinforcing and cementing immigrant ties to "home" countries. *The Washington Post* wrote, "Eager to reach their countrymen living in the United States, Mexico's two main opposition presidential candidates are barnstorming through Southern California as if it were Mexico's 32nd state."<sup>13</sup> It is increasingly the case that the candidates of other countries actively campaign in the United States for financial and other kinds of support. When Vicente Fox campaigned for the Mexican presidency, he campaigned in Mexican communities in the United States.<sup>14</sup> In 2000, Francisco Labastida, presidential candidate of the Institutional Revolutionary Party (PRI), appeared on the *Washington Post's* Live Online, an Internet Q&A, to campaign among his countrymen in the United States.<sup>15</sup>

This process has even spread to the state and local level for Mexican politicians.<sup>16</sup> In 1998, candidates Ricardo Monreal and Jose Olivera — rivals for the governorship in the central Mexican state of Zacatecas — campaigned in California, where thousands of people originally from that state live and work.<sup>17</sup> That same year, Mexico City Mayor Cuauhtemoc Cardenas Solorzano was in Chicago to inaugurate the first U.S. branch of Mexico's Party of the Democratic Revolution.<sup>18</sup> A coalition — "Mexicans Living Abroad" — brought together Mexicans living in California, Texas, Iowa, and Illinois to press the Mexican government for the right to vote in Mexican elections.

Moreover, governments are increasingly taking affirmative steps to ensure that their nationals abroad vote in "home" elections. In Mr. Fox's 2000 presidential campaign, his National Action Party and Cardenas's Party of the Democratic Revolution organized caravans to take Mexican immigrants to polling places in Mexico from cities as far-flung as New York and Yakima, Wash.<sup>19</sup> With the new absentee voting law, this will no longer be necessary and energy and attention can be better paid to getting out the Mexican vote — in the United States.

These initiatives are now not confined to Mexico. In the 1999 Israeli elections, both major parties chartered jets to fly dual citizens to the polls in Tel Aviv.<sup>20</sup> Elsewhere, more than 50,000 Dominican immigrants, many of them U.S. citizens, are registered to vote in the Dominican Republic. In May 2003, they were able to vote in a Dominican election from the United States, forming long lines at the 16 polling booths set up in New York alone.<sup>21</sup> In the 2004 Ukrainian presidential election, consulates in four U.S. cities were designated to receive the votes of American citizens of Ukrainian decent.<sup>22</sup>

### Voting Abroad: Some Issues

Voting is a critical and basic right of membership in any democratic community, but perhaps especially so in the United States. There it is, as noted, an absolutely integral part of democratic theory and American political development. With that right, however, comes great responsibility. Citizens are asked to give their informed choice, not just their vote. They are asked to frame their vote through the lens of national community interest, not merely self interest. It has been assumed for many centuries that the "national community interest" spoken of here is in fact the interest of the American national community, not the interest of a foreign country. Trying to do justice to both community and self interest in a citizen's voting decisions is hard enough. Throwing in the interests of a citizen's country of origin places too much unnecessary and counterproductive weight on top of what is already a difficult set of citizen calculations.

It is said that allowing American citizens to vote abroad will encourage democracy. Yet a review of the evidence suggests this is not necessarily the case. Americans who vote in foreign elections do so to further what they see as their own self-interest.<sup>23</sup> The idea that immigrant communities will necessarily foster democracy overlooks the fact that *many* political parties and interests in the "home country" are now seeking to organize their nationals abroad. Some of these groups are indeed democratic, as most Americans understand that word. However, some are not. During the civil war in El Salvador, the Marxist guerrilla group FMLN "organized the Salvadorian communities abroad for solidarity and support activities."<sup>24</sup>

### Elections as Emotional Bonding Mechanisms

Advocates argue that the United States ought to encourage dual citizens to vote in the elections of their "home" countries as one way for America to be more welcoming of new immigrants. The question is whether this is the kind of welcome doesn't carry with it the seeds of an emotional good-bye. Are policies that facilitate continuing intense attachment to another country the kind of welcoming policies the United States ought to encourage?

Before addressing that question, it is worth considering why voting became so central to American democratic development. One clue is found in the fact that it was not only the lack of representation that caused the rupture with England, but also the lack of the participation that was its foundation. One could, of course, have representation without participation. England's appointed viceroys and governors were examples. Future Americans,

however, wanted participation to lead to representation, not to have the two divorced from each other.

In trying to separate participation and representation, England made a strategic mistake of the first rank. Political participation, especially around the exercise of voting choice and exercise of one's political voice, not only reflects attachments; it also helps create them. Taking part in a collective civic exercise, sanctioned — perhaps idealized is a better word — by a national community is part of a shared experience that helps to generate and maintain ties to that community.

Ginsberg and Weissberg found empirical evidence of participation's effects in an analysis of national survey data examined in 1968 and 1972.<sup>25</sup> They tested the proposition that one function of voting is to generate support for the government, independent of particular policies or whether a person's preferred candidate won or lost. They found that participation itself was strongly associated with an improvement in the extent to which citizens view the government as responsive — even if their candidate didn't win.<sup>26</sup> They conclude, "Though elections are usually conceived as instruments of popular control, we have seen that American elections can also serve to mobilize citizen support for leaders and the regime itself. It is in the area of regime support that we find the clearest impact of elections."<sup>27</sup>

The emotional bonding function of participation underlies the arguments that were made for expanding the suffrage over the course of American history. A lack of standing as a full citizen who could vote was viewed and experienced as unfair and alienating, as well as being morally, politically, and ethically suspect. Anger and alienation, of course, impede attachment, rather than facilitate it. On the other hand, participation is emotionally bonding. Those able and willing to participate feel more closely connected with the political community and way of life that supports it.

This is, not incidentally, the same reasoning that has led observers in Iraq to propose that, even though the Sunni Muslims chose not to take part in the early national elections, they still be brought into the political process in the allocation of parliamentary seats and the writing of the new Iraqi constitution. The psychological principle underlying both examples is quite clear: Participation as a legitimate member of a community develops and reinforces the ties to that community. The mechanism is the same whether we are speaking of new citizen ties to the American community, Sunni ties to the new Iraqi national community, or American dual citizens' ties to their countries of origin.

### Knowledge of Different Political Universes?

Advocates for allowing Americans to vote in foreign elections say that it is possible to be a fully informed citizen of two countries. This is among the weakest of the arguments for multiple voting. There is no evidence that immigrants have mastered the information necessary to exercise responsible citizenship and voting in two cultures. Indeed, there is a great deal of evidence that suggests just the opposite, that it is increasingly difficult even for Americans to be considered informed citizens in their own country, much less to be substantially informed about two countries.

The following questions could be asked of everyone, more recent and older Americans alike, of almost any campaign, with sobering consequences: Did they pay close attention to the campaign? Did they read the news analyses? Did they hear or follow all the debates? Are they familiar with the details of the candidates' positions? Have they looked into the major issues themselves, not depending on candidates' views of them? As the *The Washington Post* put the matter, "it is fair to ask whether the desired quality of a citizen's genuine commitment to his country can be reinforced by anything short of full and undivided political allegiance to one sovereign, as expressed by the solemn act of voting."<sup>28</sup>

Some argue that immigrants do as much in following the elections in their home countries as Americans do for theirs, which is to say some, but not a lot. Others point to the low level of information that Americans bring to their election choices and ask why immigrants should be held to a higher standard. The first argument isn't convincing because the question is not whether immigrants have the same level of understanding of their home country politics as Americans have of theirs, but whether it is possible to have good enough knowledge of *two* different political systems, the American and the "home" country's.

The second argument is also unpersuasive, but for different reasons. Here the unstated premise is that low levels of understanding are fine for *both* immigrants and Americans. That is hardly an effective point in favor of allowing American dual citizens to vote in foreign elections. The point is not whether immigrants are as ill-informed as Americans, but whether it is possible to be well informed about two different electoral systems and contents, and whether given limits of time, attention, and understanding, we ought to prefer *all* Americans to be knowledgeable first about their own system of government and election issues.

There is one other difference between native-born and immigrant Americans that is relevant to this particu-

lar argument, but rarely mentioned. Being born and raised in a culture gives one a foundation of understanding. The average ill-informed American college student has nonetheless lived in the country for 20 years, been exposed to its political culture for the same period, and lived through numerous local state and national elections and the events and issues that have been a part of them. It is likely that immigrants who come here as young adults and older do know more about their home countries' politics and culture, but that is no essential advantage here.

The politics of the Dominican Republic or familiarity with Indian politics are not a necessary or even useful template for American politics. In some ways, immigrants must learn not to interpret what they see the United States through the frames of reference they are used to. They must unlearn their past, as well as acquire new, more appropriate frames for their new country's politics. It is no easy matter.

The informed citizen is the basic foundation of democratic process.<sup>29</sup> If citizens don't know or won't learn the history and understand the policy dilemmas they face, a linchpin of democratic government has been lost. Widespread ignorance or historical amnesia is all the more dangerous at a time when the United States and its citizens must address the complex domestic issues of diversity and the dangers of catastrophic terrorism.

What do citizens in this country need to understand and appreciate? It would be helpful to have some knowledge of the ways in which the ideals of personal, religious, political, and economic freedoms motivated those who founded this country and those who followed. It would be useful to be familiar with the courage, determination, self-reliance, optimism, and pragmatism that accompanied those motivations. It would be important to know when and why they lived up to these ideals, as well as when they didn't.

These are not matters for immigrants alone. They apply equally to current and prospective citizens. Yet we are failing badly in both groups on these matters. The "test" for citizenship taken by immigrants requires knowledge of a number of disjointed facts requiring little, if any, knowledge of the traditions, political and psychological, that have shaped this country. Many thousands become citizens and require translations of ballots on which they cast their vote. It is hardly likely that these citizens have followed the complex pros and cons of these policy issues<sup>30</sup> since they don't well understand the language in which these debates are conducted. More likely, they gain their information from advocacy groups who have a very particular point of view, but one not based on dispassionate presentation of the issues so that new voters can make up their own minds.

Advocates of multiple citizenships assure that it is possible and desirable for Americans to be well versed in the culture, history, language, and political debates of other countries. As a general aspiration, this is certainly uncontroversial. A problem arises, however, because there is overwhelming empirical evidence that children in American schools are not learning very much, very well, about their own country. Both citizens and immigrants fail badly on indicators of deliberative knowledge.

Consider that the Pew Research Center for the People and the Press reported that in 1996, "a quarter of those they surveyed said they learned about the presidential campaign from the likes of [Jay] Leno and David Letterman, a figure rising to 40 percent among those under 30."<sup>31</sup> Not surprisingly perhaps in view of those figures, other national studies show that American schools are losing ground in what might well be considered the most basic element in preparing young persons for their role as citizens — having a foundation of knowledge about the country in which they live and the political institutions that are the foundations of its freedom and way of life.<sup>32</sup>

A national survey conducted by the National Constitution Center found, "only 6 percent can name all four rights guaranteed by the First Amendment; 62 percent cannot name all three branches of the Federal government; 35 percent believe the Constitution mandates English as the official language; and more than half of Americans don't know the number of senators."<sup>33</sup>

The National Assessment of Educational Progress (NAEP) Report Card in Civics is a major test of subject knowledge for 4th, 8th, and 12th graders. The 1998 NAEP national surveys and "civics report card," divided scores on knowledge and proficiency into four groups: Below Basic, Basic, Proficient, and Advanced. At each of the three grade levels tested (4th, 8th, and 12th), Basic was defined as having "partial mastery and skills that are fundamental to proficient work at each grade," while Proficient was defined as representing "solid academic performance."

So how many students at each grade level were "Proficient" or even better "Advanced"? Not many. In 4th grade, only 25 percent scored as Proficient or Advanced, which means, of course, that 75 percent did not reach proficiency. In 8th grade the figures were 24 percent for Proficient or Advanced, and in 12th grade the figures were 30 percent for the two categories. These are composite scores and do not directly report the disparities by race and ethnicity that are, if anything, even more troubling. E.J. Dionne characterized the results as "a national scandal," but it is worse than that because, "When

the country began establishing public schools in the last century, the whole idea was that freedom depended on an educated citizenry. Civics wasn't an add-on. It was the whole point."<sup>34</sup> Historical amnesia<sup>35</sup> and civic ignorance are dangerous to democracies that depend on their citizens' knowledge, perspective, and judgment. Without those virtues, a balanced perspective and understanding of one's country is not possible, and thus neither is an appreciation of, a pride in, and a commitment and responsibility toward this country, patriotism in short, possible.

Is it legitimate to hold immigrants to a standard unmet by citizens? It would seem that ignorance among the latter is not a good reason to support it for the former. Certainly, there is a legitimate case to be made for asking those seeking citizenship to be conversant with the traditions and practices of the country to which they are asking for entry. Yet, of course, the implications of these data are troubling for Americans and immigrants alike — not only the latter.

Americans do not have, and are not acquiring, the levels of basic information and proficiencies that are essential to living in and supporting a democratic republican form of government. These deficiencies apparently extend from our average students to our "best and brightest." They raise severe questions about whether American children will have the tools to shoulder the responsibilities of living in and helping to guide the United States through dangerous and difficult times. And they certainly don't give much comfort to those who believe it is no difficult matter to be sufficiently versed in the history, politics, and policies of two cultures. It remains to be seen whether it is truly possible to be conversant with the traditions and policy debates of two countries. Evidence keeps mounting that doing so even in one country is a task beyond the reach of increasing numbers of American citizens.

That fact however, does not argue for lower standards. On the contrary, the informed exercise of citizenship plays such a central, critical role in this democratic republic that it is extremely inconsistent for advocates to push more liberal dual citizenship policies in the name of furthering democracy, while at the same pushing for standards of knowledge and commitment that undermine it.

The dilemmas here are well captured in the work of David A. Martin, who underscored that, "Democracy is built on citizen participation, and its ideal is meaningful participation — of an engaged and informed citizenry. This presupposes a certain level of devotion to the community enterprise, to approaching public issues as a uni-

fied community, even while leaving much to individual choice in deciding on the aims the polity should pursue or on specific policies to address specific public issues."<sup>35</sup>

While Martin at first showed some sympathy to dual citizenship, he did go on to conclude that, "It must be conceded that the claims made.... If pushed to their limits, would argue strongly against dual nationality in the first place. If focusing primary political activity in this fashion [by allowing the right to vote in only one place] carries such benefits for solidarity, democratic engagement, and civic virtue, how much more could these goods be expected to flow from channeling *exclusive* political activity? And the point is even strong if the person, by surrendering, or being required to renounce, all other national ties, has thereby forsworn the use of the exit option when policies do not turn out as she favors."<sup>37</sup>

### Dual Votes Without Dual Responsibility

Martin points out that, "As the globe shrinks and international cooperation increases, political decisions made by other nations have an increasing effect outside their own borders. ... Human beings are generally represented in these settings by elected national political leaders, or by their delegates. A person who has a say in selecting two or more sets of those leaders ... secures an advantage."<sup>38</sup>

However, the issues go deeper than whether select groups have a larger voice through multiple voting. There is also a very large issue of who bears the consequences of second, foreign votes. Certainly, not the dual citizens who continue to live in the United States while voting abroad.

Israel is a good example of this issue. In their 1999 elections, the two parties stood for very divergent policies with regard to the security of that country. Yet every American Jew who voted in that election, whether left or right in their political views, would not be in Israel for the consequences. It was, in effect, a free ride from the real responsibility that comes with living where the consequences will be most directly felt. Living with the consequences of your choice is one mechanism that helps to ensure focus and perspective.

This issue is not confined to foreign elections that have life or death implications. In June 2003, Americans of Polish descent went to the polls to vote on the issue of whether or not Poland should join the European Community. One local observer of the Chicago Polish community wrote, "Some wish that residents with Polish roots would show the same enthusiasm about Chicago elections as they have about this one."<sup>39</sup> That article continued, "Polish names once figured prominently in

city politics. Among the best known was Dan Rostenkowski, the former House Ways and Means Committee chairman. But that clout is waning as local Poles move to the suburbs and focus their attention on money instead of politics. 'Polish mothers don't raise their children to be alderman,' said Aurelia Pucinski, a former clerk of Circuit Court in Cook County. 'They raise them to be businessman. Unlike other ethnic groups, the political process is not something they see as important in their lives.' That has not been true with this issue."<sup>40</sup> One might reasonably ask why Americans of Polish descent who have been in this country for generations are voting on major policy in another country on another continent. A likely answer is: Because they have an interest and connection with their former communities. Yet that answer raises a further question: Is it not possible to have an interest and a connection without voting in another country's elections? Of course, it is.

The increasing use of the United States as an election arena for foreign nationals and nations is a real problem. It drains attention and attachment away from immigrants becoming more integrated into the American national culture. The question is what to do about it.

### What to Do?

Some find the idea of American citizens voting in foreign elections and otherwise associating themselves with foreign governments contrary to America's best interests and want to take strong remedial steps. Constitutional lawyer Bruce Fein argues that "Americans who vote in a foreign election, occupy any office in a foreign state, enlist in a foreign army, attempt to overthrow the U.S. government, or otherwise affirm allegiance to a foreign nation should forfeit their citizenship."<sup>41</sup> The problem with that approach is that the Supreme Court ruled 5-4 in *Afroyim v. Rusk* (1967) that Americans could not lose their citizenship for voting in a foreign election. Fein's solution: "Congress should either propose a constitutional amendment to overcome *Afroyim*, or, enact legislation that deletes the specific intent requirement in the expectation that the high court will reconsider the precedent."<sup>42</sup> The problem with this approach is that passing a constitutional amendment is difficult at best, and one can anticipate howls of outrage at what will be argued is a punitive "anti-immigrant" measure. Moreover, having Congress pass a measure specifically framed to have the Supreme Court reconsider their opinion depends on the makeup of the court.

Some, recognizing that voting in foreign elections is damaging to the interests of the American national community, have suggested a split-the-difference

approach. Aleinikoff proposes that the United States negotiate a series of bilateral agreements with foreign countries whereby their former nationals be given a choice whether to vote in the United States or not.<sup>43</sup> An American dual citizen domiciled in a foreign country would have to return to this country one year prior to the election in which he or she wished to vote, or not be able to do so. This would involve the United States in the arduous and, I think, unnecessary negotiations with 150 separate countries.

Not only is this a clumsy and unnecessary idea, there are apparently a number of constitutional barriers to such a proposal.<sup>44</sup> These include the difficulty of establishing a "compelling federal interest," the problem of overcoming the strict scrutiny standard that would most likely be applied (because American dual citizens domiciled abroad would not be able to vote by absentee ballot), and the question of whether such a proposal is sufficiently narrowly tailored, among other things.

O'Brien, another multiple voting advocate, suggests several other alternatives.<sup>45</sup> Among his suggestions are a repeal of the Absentee Voting Act, a modification of Aleinikoff's proposal in which only those who have previously voted in foreign elections are given the choice, or establishing a universal "vote where domiciled" rule. Each of these has problems too. Doing away with absentee ballots would disenfranchise all Americans living abroad, including those serving in our military. The modification O'Brien proposes creates an incentive for dual citizens to get more involved more quickly with electoral politics of their former home country elections so as to preserve their options. And the search for a universal rule, vote where domiciled, forces Americans who live abroad not to vote in their own elections.

There is however a more fundamental flaw in all these suggestions. They are trying to accommodate American citizens voting in foreign elections. On balance, there is no compelling reason to do this, and certainly none to encourage it.

What the United States should be doing is encouraging immigrants, their families, and their descendants to consider *America* their "homeland." This is less likely to happen if there are continual pressures and incentives to look toward the foreign country from which they or their ancestors originally emigrated. There is no compelling reason to allow American citizens to vote in foreign elections and many reasons to discourage the practice.

Given the importance to the American national community and the republican democratic system that is an integral part of it, it seems prudent to do everything

#### Recommendation 1: American citizens should be actively discouraged from voting in foreign elections.

This discouragement should take the form of making such a prohibition against foreign voting a stated condition of citizenship applications, including such an affirmation as part of the oath of citizenship, and placing pressure on foreign countries not to make efforts to enroll American citizens in foreign voting. It might well also include legislation proscribing such behavior.

possible to encourage attachment to *this* community, and take steps to lessen the incentives for connections to other countries and their national communities. American law cannot, of course, mandate what other countries choose to do with regard to their former nationals, but it can make clear in a variety of ways that recruiting American citizens to vote in foreign elections will not be looked at with favor by the United States.

## Holding Office in or Serving a Foreign Country

Next to voting, holding office is among the most important public privileges of citizenship and membership in a community. Individuals have many reasons for wishing to gain public office. They may wish to serve out of a sense of wishing to repay in some way the benefits that come with being a member of this community, they may do so out of a sense of civic responsibility or their desire to help improve and protect their country, their own ambitions, or some mixture.

Citizens, on the other hand, rely on those in office, whether in elected or appointive positions. In doing so, they have every reason to expect and demand that leaders will hold the community's interests as paramount. This does not mean they have to be guided by majorities in opinion polls. Rather it means that they must take seriously the trust that they have been given to act in accordance with the interests of that community, broadly conceived. A leader who represents a community is expected to have that community's interest wholly at heart, even if he may not agree with his constituents on a particular policy.

In the past, it went without saying that an elected or appointed official would devote his or her full time and attention to the public matters that they were elected



or appointed to pursue. That is why officials cannot serve in public and private service at the same time, except on boards and advisory positions. We would not expect a United States Senator, for instance, to hold another job. Nor would we expect a member of the president's staff to do so. Even part-time legislative or executive positions must avoid conflicts of interest.

Time, attention, and the community's best interests are the three key assumptions of public responsibilities. Yet, all three are thrown into question by the practices that are slowly arising with multiple citizenships. Over the years, a number of Americans have held positions of power and importance in other countries. They continue to do so.

Muhammed Sacirbey, Foreign Minister of Bosnia-Herzegovina in 1995-96, is an American citizen and dual national. The chief of the Estonian army in 1991-95, Aleksander Einsein, also was an American. Valdas Adamkus was an administrator in Chicago for the Environmental Protection Agency before he became president of Lithuania.<sup>46</sup> In 2002 at least 10 Americans of Nigerian descent left the United States to campaign for office in Nigeria.<sup>47</sup> Americans have served at the United Nations as ambassadors for their country of origin.<sup>48</sup> And a number of Mexican Americans have returned to Mexico to run for office.<sup>49</sup> Former Secretary of State Madeleine Albright was even approached to seek the presidency of her native Czech Republic, but she declined.<sup>50</sup> In November 2003, the foreign minister of the Iraqi Governing Council announced the appointment of Rend Rahim Francke as Ambassador to the United States; she became a U.S. citizen in 1987.<sup>51</sup>

Not all those Americans who return to their home countries necessarily add to the sum total of democracy in the world. In 1998, the State Department said that as far as it could tell, Hussein Mohammed Aidid, a U.S. Marine Corps veteran, was a naturalized American citizen as well as Somalia's most powerful warlord before he died.<sup>52</sup> Still, for the most part, most of those named above left the United States to serve in their country of origin in what would be considered a productive way.

There is no law against doing so, and on balance no real issue in the fact that they do so, as long as their civic and citizenship rights are not exercised in two places at the same time. It is quite acceptable for Mr. Adamkus to leave the United States to become president of Lithuania, but it would not be appropriate for him to vote in an American election while serving. It would be acceptable for Mr. Einsein to become chief of the Estonian army, but not to be a member of the U.S. armed forces at the same time.

The basic issue here is to avoid a conflict of interest, in these cases a conflict between two different sets of national interests. It cannot be assumed that because two countries are democracies that they share the same interests. France and the United States come readily to mind here. Nor should the citizens of one or another country have to struggle with trying to figure out whether their national community interests are truly being represented.

The individuals noted above are clearly serving the country to which they returned and in that sense might be considered sojourners in the United States. Yet with the rise of transnationalism and the decision of many immigrant-sending countries to make political use of their nationals, a new development has arisen. Americans with dual citizenship are being asked, and are agreeing, to serve in foreign governments at the same time that they retain and exercise their American citizenship.

There are a number of examples. Jesus Galvis, a Columbian travel agent and elected official in Hackensack, N.J., ran a campaign in 1998 for a seat in the Columbian senate.<sup>53</sup> He planned to hold both offices. Mr. Galvis was asked in an interview whether he could represent his Hackensack constituents while splitting time in Colombia, and said he would have been like a U.S. Congressman with an office in his district and one in Washington. In each place, he said, "I would be representing the Colombians in the United States."<sup>54</sup> Mr. Galvis' non-Columbian constituents in Hackensack would no doubt be surprised and not pleased to learn that if they weren't Columbian they would not be represented.

Others were critical of Mr. Galvis' position. Saramaria Archila, head of a Latin American social services agency in Queens, New York, who had lobbied for the dual citizenship law in Colombia, nevertheless said Galvis crossed the line. "If I am an elected official in a country, it is impossible to defend the interests of my community in another country," she said.<sup>55</sup>

Yet another development along these lines is the carving up of American territory as districts for representation of foreign governments by American citizens. As one report noted, "In what experts call an extraordinary step... three Mexicans living in the United States are running for seats in Mexico's Congress. If they win — and chances are good for at least two of them, in Chicago and Los Angeles — they will live in the United States and represent Mexicans here."<sup>56</sup>

That report continued, "The National Action Party recently introduced a proposal in Congress to reserve 10 of the 500 seats for Mexicans abroad, and others

talk of states of United States candidates in the 2003 Congressional elections....If they win, they plan to commute to Mexico at least part of the time Congress is in session — about six months a year, in two month stretches.”<sup>57</sup>

In 2001, Juan Hernandez, a former University of Texas at Dallas professor, was named the first American to serve in a Mexican president's Cabinet.<sup>58</sup> When Mexican President Vicente Fox met with President Bush, Hernandez was there as an adviser to Fox. And when a group of Democrats from the U.S. Congressional Hispanic Caucus met with President Fox, Hernandez was there.

Mr. Hernandez's role is to organize and mobilize Mexican Americans in the United States. What is he mobilizing them to do? In an interview with Ted Koppel on Nightline, he made it quite clear: He wants Mexican Americans in the United States to think “Mexico First....I want the third generation, the seventh generation, I want them all to think ‘Mexico first’.”<sup>59</sup> Americans, on the other hand, might well be excused if they wonder why one of their fellow citizens is legally entitled to work in and for a foreign government advocating that Americans put another country first.

Another example of this kind of outreach is the setting up of a 120-member “advisory council” made up of American citizens of Mexican descent.<sup>60</sup> The report notes that the candidates must be at least age 18, Spanish speakers, Mexican citizens, and Illinois residents with no criminal record. They must also submit a petition with at least 50 signatures in support of their candidacy. That means there will be a campaign, as well as an election — yet another way by which to organize the attention and interests of Mexican Americans toward their “home” country.

Recruiting Americans to serve in “home” country governments is not the only method that foreign government use to foster identifications with and attachments to those countries. Last year, President Leonel Fernandez of the Dominican Republic visited his fellow countrymen and women in New York, which has the largest concentration of Dominicans in the United States. Among the ideas under discussion at the town meeting were, “a Dominican Peace Corps that would bring young Dominican-Americans back to their roots.”<sup>61</sup> It's a laudable idea in many respects, but wouldn't young Dominicans and their chosen country benefit from having them involved in the American domestic versions of the Peace Corps like Teach for America?

The major issue in many of these cases is, to repeat, the question of conflict of interest, focus, under-

### Recommendation 2: American citizens should be actively dissuaded from seeking or serving in elective or appointive offices abroad

They should be actively discouraged from serving on policy making legislative or executive government entities of foreign governments. This discouragement should take the form of making such a prohibition a stated condition of citizenship applications, including an affirmation to this effect as part of the oath of naturalization, making it a triable offense while an American citizen, and placing pressure on foreign governments not to make efforts to enroll American citizens in standing for or serving in the governments of foreign countries.

standing, and above all, attachment. We enact conflict of interest laws in the United States precisely because individuals are not the best judges of what they will be able to separate into separate spheres, and how well they will be able to do so. Individuals may well not see any disadvantages to representing foreign countries and the United States at the same time, but in many ways their views are the least reliable on these matters.

It is a fundamental principle of American republican government that representatives, whether in the legislature or the executive, are expected to truly and faithfully represent the national community of which any local community is an integral part. Running for office in a foreign country and continuing to exercise the rights of American citizenship — especially holding office, but also voting and organizing one's fellow foreign nationals — is incompatible with that expectation.

Americans serving as advisors to foreign governments might argue they are representing the interests of the fellow Americans of whatever particular descent in their home countries. A response to that is to ask whether that attention would not better be applied to improving the quality of life and citizenship with this country. The answer “I can do both” does not recognize the normal limits of time and attention that apply to most people. It also fundamentally neglects the psychological laws of attachment. That is why one lawyer can't represent two opposing sides in a court case.

All of these considerations underlie the United States' stake in these issues. This is not just a matter of exercising the personal freedom that American citizenship grants, but the national community's stake in having it exercised for the benefit of that community. Of course, dual national Americans may want to advise or

serve their countries of origin, but from the standpoint of the American national community the questions is: Why should that desire be given any standing or encouragement?

## Serving in a Foreign Army

The willingness to serve and protect your country is one of the most solemn responsibilities of citizenship. The Oath of Allegiance taken by new American citizens says in part, "that I will bear arms on behalf of the United States when required by the law." That oath, an outgrowth of a long history of citizen-soldiers, reflects the critical importance of being willing, even in an age of a volunteer army, to serve if necessary. There is no more important stake that a citizen has than the protection or preservation of his or her country.

Such willingness represents a commitment and an acknowledgement that a citizen may be called upon to give up his comforts, his livelihood, and even his life if the circumstances warrant. It is the ultimate merger of responsibility and caring, essential elements of the psychology of patriotism. The United States recognizes this fact, and immigrant green card holders who serve in the U.S. armed forces have the normal five-year waiting period before being able to apply for citizenship reduced or waived altogether.

Immigrants who come here from countries in which ethnic military conflict is a fact of life can hardly be expected to leave their feelings behind when they arrive in the United States. For many years, Irish Americans contributed money to their ethnic brothers fighting the British in Ireland. Jews have contributed to Israel since that country's founding. And more recent Muslim arrivals have contributed to their own ethnic-based charities, some of which have operated as fronts or helpmates for

terrorist activities. The history of ethnic help for family homelands is an old American story.<sup>62</sup>

So, in a more limited sense, is the modern history of Americans fighting abroad in "foreign wars." Americans of the left fought in the Spanish Civil War. In 1937 retired Army Capt. Claire Lee Chennault went to China at the request of Madame Chiang Kai-shek to help the Chinese develop an air force capable of confronting the attacking Japanese. This mission became the basis for the famous all-volunteer force, the Flying Tigers, that served with distinction both before and after Pearl Harbor. The White House sanctioned that volunteer group.<sup>63</sup>

In a very well publicized example in 2002, Democratic candidate for Congress, and now a congressman from Illinois, Rahm Emanuel was criticized by his opponent for being an Israeli dual citizen and having served in that country's armed forces while an American citizen.<sup>64</sup> That impression had been fueled by comments like those of Emanuel's White House colleague, George Stephanopoulos, who told Nightline that, "Rahm had served in the Israeli army." The *Jerusalem Post* reported on July 1, 1997, after an interview with Mr. Emanuel that, "What has perhaps gained Emanuel the greatest admiration in Jerusalem was his coming to the country during the Gulf War to volunteer at a supply base near Kiryat Shmona. He did mental work at the base, separating tank brakes from jeep brakes from truck brakes. He downplays the trip, saying it was not a sacrifice, merely 'something I wanted to do.'"

Some go farther. During the savage ethnic fighting that flared in Yugoslavia in 2001, a group of about 400 Albanian Americans volunteered to join the rebel Kosovo Liberation Army.<sup>65</sup> Several died.

The problem of dual citizens, or even American citizens with strong homeland feelings, entering into combat in one form or another in their countries of origin is certainly not as large a problem numerically as the issue of foreign voting; the numbers are most likely very small. Nonetheless, it is worth paying attention to because it is part of a group of behaviors that tend to reinforce emotional ties to foreign countries, when every effort should be made to foster attachments to this country. The United States cannot easily be in favor of trying to cement immigrant ties to this country while encouraging immigrants to vote, serve, and fight abroad for other countries.

## Dual Citizens and Public Life in the United States

The White House Fellowship is one of the most competitive and prestigious fellowships in the country. From

**Recommendation 3: American citizens should be actively dissuaded from serving in a foreign military in whatever capacity unless specifically authorized by competent U.S. authorities.**

This discouragement should take the form of making such a prohibition a stated condition of citizenship applications, including an affirmation to this effect as part of the oath of naturalization; making it a firable offense while an American citizen; and placing pressure on foreign governments not to encourage American citizens to serve in their armies.

many, few are chosen, and they go on to important positions in government, industry, education, and other key American institutions. On its website the fellowship lists a number of frequently asked questions, and among them is the following: Can I be a White House Fellow if I have dual citizenship?<sup>65</sup> The answer is no.

Questions that arise concerning the rights and responsibilities of American dual citizens within the United States are similar — but in some respects more complicated — than the questions of whether American citizens ought to take part in foreign politics. Dual-citizen Americans are, after all, Americans. If they are not seeking to run for office in a foreign country, or vote there, or serve as appointed advisors to foreign governments, they have avoided the actions that are most troubling to the integrity of the national community in which they live — or have they?

Here is the issue. The United States has within its population more and more immigrants from dual-national countries. They become citizens by naturalization or because they are born here to immigrant families. Many Americans are, or can become, dual nationals.

Given American mobility patterns, it is just a matter of time before American dual nationals will begin to take their places in the halls of government, community, and civic organizations. Dual nationals will begin to run for office. They will be appointed as judges. They will begin to occupy advisory roles to those in power. And they will begin to staff our decision-making institutions, like, for example, the Pentagon, CIA, and State Department.

Indeed, they have already done so. Miguel Estrada, nominated by President Bush for a federal judgeship, immigrated to the United States as a teenager from Honduras. Michigan Gov. Jennifer M. Granholm was born in Vancouver, British Columbia. Zalmay M. Khalilzad, U.S. Ambassador to Afghanistan, was born in Mazar-i-Sharif and is Pashtun by ethnicity. The Commander of the U.S. Central Command is John Abizaid, a Lebanese-American. And, of course, almost everyone knows that California Gov. Arnold Schwarzenegger was born in Austria.

All of these individuals, by virtue of their family's country of origin, are eligible for dual citizenship. Yet none of them has had the issue of dual attachments raised in connection with their leadership in these key institutional positions. It is worth asking why. Insofar as the record shows, none of these Americans has taken steps to cement their ties to their family's country of origin. They do not hold two passports. They have not served in, or as advisors to, a foreign government. They have not served

in the armed forces of another country. They have no history of being advocates, specially, for their family's country of origin.

Should Americans who hold dual citizenship serve in important public positions? The United States now distinguishes between green card holders and citizens in only a few remaining areas, such as the right to vote, the right to serve on juries, and the right to hold certain high level elective offices and some state and all federal civil service positions.<sup>67</sup> These distinctions are based on the understanding that it takes time to know a culture before you can adequately represent it. They are also based on the assumption that immigrants who have not taken steps to become citizens have demonstrated a lack of commitment that by itself calls into question their ability to speak for, act on behalf of, or represent citizens.

But what of those immigrants who have already become citizens? They have demonstrated a commitment by successfully going through the process. Should that mark the end of our concerns? And what of American leaders who are citizens of another country as well? This is a sensitive issue. However, it is a growing one.<sup>68</sup>

In 1998, a French Canadian with a U.S. passport ran for mayor of Plattsburgh, N.Y. He argued that the incumbent spoke French too poorly to be running a city so close to Quebec; he lost. Also that year, an Australian, Helen Cameron, who traded her Australian citizenship for American nationality so she could do business, served on the local school board and even sought the mayor's seat in Irvine, Calif. In the late 1990s Adriano Espaillat, a naturalized American from the Dominican Republic and a member of the New York State Assembly, became the first Dominican elected to a U.S. statehouse. In 2002, an immigrant from India ran for the Iowa legislature.<sup>69</sup>

The major issue here is one already addressed to some degree in the discussion of holding office in, or serving as an advisor to, a foreign government. A national community has the right to expect the highest levels of allegiance to it from those serving on its behalf. Indeed, because of the exercise of power involved in serving in decision-making roles, it could be argued that this standard should be even higher for leadership roles than for simply being a citizen.

A national community can tolerate some of its citizens disliking the government. It can get along all right if *some* of its citizens have an attachment to other countries, so long as those numbers are not large and the power of those attachments aren't strong enough to trump attachments to the national community. However, a community is much less able to tolerate persons in position of power who divide their national loyalties between two countries.

Spiro has suggested that this issue be addressed through a conflict of interest approach.<sup>70</sup> So for example, a dual national in the State Department would excuse himself if dealing with an issue that affected his other country of attachment. Or to use Spiro's illustration, no American-Mexican dual citizens should serve on a U.S. trade delegation to Mexico.<sup>71</sup> Regrettably, the issue is not that easily resolved.

Spiro's solution depends on self-filtering, where people realize there is a conflict and then remove themselves. But what if they don't think there is a conflict, or feel they can "handle it." Spiro's example of barring a Mexican American from a trade delegation to Mexico assumes what remains to be demonstrated: that a Mexican American cannot be trusted to champion American, rather than Mexican, interests. Should Gov. Granholm disqualify herself from any issues that deal with Canadian nationals? That seems wholly unnecessary.

What if a dual-citizen American identifies with her Hispanic ethnicity? Will she then have to reclude herself from all dealings with Latin America and Spain? What of a dual-citizen American with strong feelings toward and identifications with his Muslim religion?

These examples suggest that no conflict of interest can be assumed and that one must look elsewhere for evidence that it is or is not a problem. An example of this dilemma is seen in recruiting patterns at the Central Intelligence Agency. In the wake of 9/11, a number of observers said, correctly, that intelligence agencies needed to diversify. Sen. Richard Shelby (R-Ala.) said that, "the government must do a better job at turning America's ethnic diversity and immigrant heritage into an intelligence asset by recruiting into its ranks Americans who speak Arabic and Farsi and can better meld into the byways of the terrorists."<sup>72</sup> They have been busy scrambling to add diverse nationalities to their rosters.<sup>73</sup>

Yet they have run into a problem. Many of the people they would like to recruit are naturalized citizens or children of immigrants from countries that have supplied many of the terrorists they will be arrayed against. The issue that the CIA and other such agencies face is not so much the potential for disloyalty (although that is always a dangerous potential problem for intelligence or enforcement agencies), but rather the potential — one might say the likelihood — for conflicted loyalties or attachments.

How would it feel to be a first generation Muslim whose parents came here from Pakistan, Indonesia, or Nigeria to be sent there to recruit their nationals to spy for the United States? When doing background checks for the security clearances that must be given to top-level

analysts, how is it possible to gauge a person's relative degree of commitment to his new country and to his country of recent origin? What kind of attachments are all right, and which problematic? In the old days, all one needed to do was the historical research equivalent of looking into the person's wallet and seeing if he carried a membership in the Communist Party. This will obviously no longer do. However, what does suffice is not yet clear. The danger is not treason, but rather conflicted loyalties and the failure because of such conflict to make America's positions, policies, or interests sufficiently primary.

These same kinds of issues have already arisen for naturalized or dual citizens running for elective office. In the 2000 presidential race, Nation of Islam leader Louis Farrakhan questioned the national loyalty of vice-presidential candidate Joseph Lieberman. In his remarks Farrakhan said, "Mr. Lieberman, as an Orthodox Jew, is also a dual citizen of Israel. The state of Israel is not synonymous with the United States," he continued, "and the test he would probably have to pass is: Would he be more faithful to the Constitution of the United States than to the ties that any Jewish person would have to the state of Israel?"<sup>74</sup>

A similar circumstance arose in Iowa when a naturalized Indian American, Swati Dandekar, ran for office. Her opponent, Karen Balderston, sent an e-mail asking, "Without having had the growing-up experience in Iowa, complete with the intrinsic basics of Midwest American life, how is this person adequately prepared to represent Midwest values and core beliefs, let alone understand and appreciate the constitutional rights guaranteed to us in writing by *our* Founding Fathers?"<sup>75</sup>

These accusations were insubstantial. Joe Lieberman had spent his whole life here. He was no more Israel's Connecticut Senator than John Kennedy was the Pope's president. And Ms. Dandekar, who was 51 at that time, had lived in Iowa for 31 years. Mr. Gonzales has never held a Mexican passport, and Arnold Schwarzenegger had never voted in a foreign election.

On the other hand, there are examples that do underscore the nature of the potential issues. Josaphat Celestin, for instance, came to the United States from Haiti. At first, he thought he would return as soon as possible, but then decided to stay and organize his Haitian American community to support his bid for political office. After some losses, he was finally elected mayor of North Miami with strong support of the Haitian community. But this in turn has led to concerns of non-Haitians that their needs will be neglected.<sup>76</sup>

The issue of history and experience in relationship to community representation is not a frivolous one.

Generally, people want to be sure that a leader knows the community, has spent time with it, appreciates its values and is in general agreement with them. Ultimately, it is up to those doing the appointing or electing to make this decision. A naturalized citizen who has been in the country only a few years will no doubt be judged differently from one who has lived in the United States for 31 years.

Even people who actively promote the idea of dual citizenship say there are limits to subdividing loyalties when it comes to political leadership positions. New York City Councilman Guillermo Linares, the first Dominican American elected to any office in this country, made it a point not to vote in the 1996 Dominican election, the first in which Dominicans abroad could vote. "I am an elected official of the United States," Linares said.<sup>77</sup>

The question of how much identification a leader or official has with his new or old country is unlikely ever to be resolved with decimal-point accuracy. After all, internal psychological identifications are personal, sometimes shifting within a range, and on occasion not wholly accessible to the person himself.

Consider the case of Tony Garza, a longtime George W. Bush associate who was appointed U.S. Ambassador to Mexico. He is a third-generation American whose four grandparents were from Mexico and who speaks fluent Spanish. He graduated from the University of Texas, attended Southern Methodist Law School, and was elected judge in Cameron County, the southernmost in Texas.

After the Senate confirmed his nomination as U.S. Ambassador to Mexico, he was asked in an interview about his views on U.S. policy and Mexican immigration. He replied, "I view it from the perspective of a Mexican and an American and I happen to think it's important to us that we move on immigration because I really do think it speaks to our character and our identity."<sup>78</sup> I do not wish to make too much of a single sentence, but it is a professional habit to pay attention to what people say and how they do so. Mr. Garza mentions his Mexican identification first, his American one second, and seems to weight them more or less equally, with the Mexican portion being first among equals.<sup>79</sup> Consider a possible alternative response: "I view these problems as an American with a Mexican heritage." Perhaps the operational dividing line should be between those whose American identifications are naturally primary (e.g., American of Irish decent or Irish-American) compared to those for whom it isn't (e.g., Irish-American, Hispanic).

**Recommendation 4: American citizens, whether naturalized or not, who desire to serve in elective or appointive office, or other positions of governmental responsibility should help establish the community norm of primary attachment to the American national community, or the local portion of it.**

In the specific case of dual citizenship, such persons should adhere to a standard that includes not holding or retaining dual citizenship while in American office, not taking part in foreign elections while so serving, and detaching and severing all advisory positions with foreign governments.

There is no meter to measure the strength and nature of attachments, although signposts are possible to discern and some general guidelines could be developed. Does the person currently hold, or have they ever held, dual citizenship? If so, what was the time frame and what were the circumstances? If naturalized, when did that happen and how soon (after it was possible to do so) was the application made? Has the person ever voted in a foreign election? If so, when and how often? Has the person ever held elective or advisory office abroad? If so, when and under what circumstances? Has the person ever been an advocate of the positions of his or her family's country of origin? In what circumstances?

These are the kinds of basic questions that might be asked of any person seeking to represent the national community or a local part of it. The issue is not so much a "loyalty test" as it is a form of legitimate quest for reassurance that the person has demonstrated by his or her behavior that attachments to any country of origin take a back seat to the primacy of identification with the American national community. Some positions, especially in the security and high-level advisory positions, will obviously require more.<sup>80</sup>

Stephen Castles, writing in the Australian context, notes there are already large numbers of dual citizens. He expects that in the future this practice will become even more widespread and expresses the hope this should not lead to exclusion from any rights, such as the right to stand for office.<sup>81</sup> It should not, of course.

Nor, since all citizens have the right to run for office once they are naturalized,<sup>82</sup> is any legislation possible in this matter, even if it were desirable — which it is not. The matter is best handled informally by the growth of a norm of demonstrated national attachment and in-

tegration in cases where persons run for political office or represent various communities in non-governmental, but policy-making or -deciding positions.

## Conclusion: Dual Citizenship Reform: Only Part of the Issue

All four of the above recommendations have one purpose in common: They are meant to help develop and cement the ties of immigrants to the American national community. The United States is traversing a particularly tricky and dangerous period. It is in the crosshairs of terrorists who would like to destroy, or at least catastrophically wound, the country and lack only the means to do so. Yet, in the meantime, life goes on, as it must and should. The United States continues to take in around a million legal and illegal immigrants per year. Other countries mount strenuous efforts to blind their nationals to them, even though they are naturalized American citizens. Old and new citizens alike continue to learn and know less about their country, its history, and the issues that face it. Centrifugal forces from above (globalization) and below (multicultural primacy of racial and ethnic identification) continue to compete with an American national identity.

These trends are likely to be with us for some time. Richard Alba, in his research on European ethnics, found that it took on average four generations before ethnicity truly faded and a more Americanized identity truly developed beyond the hyphen.<sup>82</sup> Can we count on the same for non-European ethnic and racial groups in the above circumstances? That seems unlikely.

In the meantime, developing and consolidating a primarily American national identity and heartfelt attachments to the American national community are critically important to our country's political well-being and security. The modest steps outlined above are not panaceas. In an age in which expectations of gratification outpace the acceptance of responsibility, they will be controversial. Moreover, even if enacted, they will help address only part of the problem.

The issues of developing the American national community go well beyond whether American citizens vote in foreign elections. If the United States is truly to be more welcoming to its immigrants, and true to its own citizens, it must do much more to foster attachments in the American national community as a whole and not just in immigrants. That critically important topic however, deserves its own discussion and recommendations.

## End Notes

<sup>1</sup> Camarota 2004.

<sup>2</sup> This view runs contrary to Fein (2005) who argues that, "Dual allegiances do not imminently threaten the fabric of the United States. But they fuel a yawning indifference to American customs and civic spirit indispensable to national vitality."

<sup>3</sup> The figures in this and the following paragraph are drawn from Renshon (2005).

<sup>4</sup> Schuck 1998, 227.

<sup>5</sup> *Ibid.*, 228.

<sup>6</sup> Anticipating the Twenty-fourth Amendment, in the case of *Harper v. Virginia board of Education* (383 U.S. 663 (1966)) the Supreme Court struck down poll taxes saying, "The political franchise of voting" is "a fundamental political right because (it is) preservative of all rights." For a closer analysis of the constitutional foundation and importance of voting as a key element of American citizenship see Eskridge 2001.

<sup>7</sup> Fein 2005.

<sup>8</sup> Schuck 1998, 235.

<sup>9</sup> Portes (1999, 467 emphasis mine; see also Miller 1999, 11. Miller writes that many immigrant-sending countries have abandoned their opposition to dual citizenship. They now encourage it, "in the hope they will form lobbies to influence their host countries' policies towards the country of origin." Evidence however, suggests they are taking a much more active stance than hope in ensuring that it happens.

<sup>10</sup> Dillon 1998, A3.

<sup>11</sup> McKinley 2005.

<sup>12</sup> Associated Press, 2005.

<sup>13</sup> Anderson 2000.

<sup>14</sup> Belluck 2000.

<sup>15</sup> Talk Back Live 2000.

<sup>16</sup> A reciprocal process is under way as increasingly American politician travel to foreign countries to campaign for the votes of that country's nationals in the United States. Democratic and Republican political leaders from New York and elsewhere routinely visited Vieques — an Puerto Rican island used for Defense Department war exercises, to protest that use (Waldman 2000). In 2001, two top Democratic Party officials — Richard Gephardt, then House minority leader and Thomas Daschle, then Senate majority leader — visited several areas in Mexico, promising to do all they could to regularize the status of illegal aliens in the United States (Thompson 2001; Sullivan and Jordan 2001). New York governor George Pataki visited the Dominican Republic to pay a condolence call on the relatives of those killed in the crash of

flight 857 which ran daily between New York and Dominican Republic; this was shortly in advance of his try for a third term in office (Associated Press 2002). Then Mayor-elect New York Michael Bloomberg made the same pilgrimage and included Puerto Rico, where he promised "closer ties" (Steinhilber 2001a,b).

<sup>17</sup> Crawford 1998.

<sup>18</sup> *Ibid.*

<sup>19</sup> Belluck 2000.

<sup>20</sup> Nagourney 1999.

<sup>21</sup> Sellers 2004, B01.

<sup>22</sup> Johnson 2004.

<sup>23</sup> Itzigsohn 2000, 1146, argues, after reviewing the evidence, "transnational elites often challenge the existing sociopolitical order, *but theirs are demands for inclusion and recognition as part of that order, not for its radical change.*" (emphasis mine)

<sup>24</sup> *Ibid.*, 1144.

<sup>25</sup> Ginsberg and Weissberg 1978.

<sup>26</sup> *Ibid.*, 35-36.

<sup>27</sup> *Ibid.*, 52.

<sup>28</sup> Editorial, *The Washington Post* 1998.

<sup>29</sup> Thompson, 1970.

<sup>30</sup> What David Martin (1999, 31) refers to as "simple voting" is in fact anything but simple (Kelley and Mirer, 1974).

<sup>31</sup> Quoted in Kurtz 1999; see also Delli Carpini and Keeter 1999.

<sup>32</sup> Patrick 1977; Torney-Purta 1995a,b; Neimi 1999.

<sup>33</sup> Cited in Branson 1998.

<sup>34</sup> Dionne 1999, A29.

<sup>35</sup> Cole 2002.

<sup>36</sup> Martin 1999, 13. It was Martin (1994) who first emphasized the importance of "common life," and later (1999, 4-14) said he was persuaded to support dual citizenship, albeit subject to limits.

<sup>37</sup> Martin 1999, 27.

<sup>38</sup> Martin 1999.

<sup>39</sup> Pierre 2003; Eig 2003.

<sup>40</sup> Pierre 2003. Nor is the Chicago EU vote devoid of Polish government self-interest. Eig (2003) reports that, "In Poland where there are 29 million eligible voters, the referendum has widespread support, but government officials are worried about turnout. The results won't count unless more than 50 percent of eligible Poles vote. That helps explain why the Polish foreign ministry has instructed its staff in Chicago to get out the vote. Even 'no' votes will help push the eligibility figure toward 50 percent. 'It's an absolute priority to this office,' says Mariusz Brymora, deputy consul general. He has about 10 people in the consulate working full time to make sure the refer-



endum passes.”

<sup>41</sup> Fein 2005.

<sup>42</sup> *Ibid.*

<sup>43</sup> Alcinikoff 1998, 34-36.

<sup>44</sup> O'Brien 1999.

<sup>45</sup> *Ibid.*, 593-595.

<sup>46</sup> Bumiller 2002.

<sup>47</sup> Haughney 2003.

<sup>48</sup> Franck 1996.

<sup>49</sup> Mena 2001.

<sup>50</sup> Mann 2000.

<sup>51</sup> Shadid 2003, A10.

<sup>52</sup> Fritz 1998.

<sup>53</sup> Portes 1999, 469.

<sup>54</sup> Fritz 1998.

<sup>55</sup> Quoted in Fritz 1998.

<sup>56</sup> Belluck 2000.

<sup>57</sup> *Ibid.*, emphasis mine.

<sup>58</sup> Hegstrom 2001.

<sup>59</sup> Nightline 2001, 7.

<sup>60</sup> Avila 2000.

<sup>61</sup> Bernstein 2004.

<sup>62</sup> Smith 2001.

<sup>63</sup> Chennault [1949] 1991.

<sup>64</sup> An Internet blog site SmarterTimes.com (March 6, 2002) carried the following background information: "A dispatch from Chicago in the national section of today's New York Times reports that the president of the Polish American Congress, Edward Moskal, 'suggested, erroneously, that' an Illinois congressional candidate, 'had dual citizenship with Israel and has served in its armed forces.' The Associated Press reported in a 1996 biographical sketch of Mr. Emanuel that 'In 1991, during the Persian Gulf War, he spent 2 and a half weeks rust proofing brakes for Israeli Army vehicles.' And the *Washington Post* reported in 1992 that 'Rahm retained dual citizenship until age 18, when he gave up his Israeli passport, but sometimes thinks 'ambivalently' about moving permanently to Israel. It is now part of his legend that during the Persian Gulf War in early 1991, when Iraqi scuds were falling on the country where he spent many a childhood

summer, he volunteered for 2 1/2 weeks on an army base near the Lebanese border, rust-proofing brakes for military vehicles.'"

<sup>65</sup> Smith and Finn 2001, A01.

<sup>66</sup> <http://www.whitehouse.gov/fellows/about/faq.html>. Accessed December 26, 2004.

<sup>67</sup> Peter Schuck, writing about the exclusion of non-citizens from federal civil service positions and many state government jobs, says, "I see no merit in denying voters or elected officials the opportunity to place aliens in the high elective office from which the law sometimes bar them." See Schuck 1989, 6-7.

<sup>68</sup> The examples in the paragraph that follows are all drawn from Fritz 1998.

<sup>69</sup> Dvorak 2002.

<sup>70</sup> Spiro 1997, 1481-83.

<sup>71</sup> *Ibid.*, 1481.

<sup>72</sup> Quoted in Mitchell 2002.

<sup>73</sup> Priest 2002.

<sup>74</sup> Quoted in Watanabe 2000.

<sup>75</sup> Dvorak 2002, emphasis mine.

<sup>76</sup> Canedy 2001.

<sup>77</sup> Quoted in Fritz 1998.

<sup>78</sup> Villafranca 2002.

<sup>79</sup> I am aware that Mr. Garza's views on immigration closely track the president's, and that ambassadors are supposed to follow presidential policy.

<sup>80</sup> Krause 2002.

<sup>81</sup> Castles 1999, 39.

<sup>82</sup> The exception of course is the presidency of the United States. Article II, Section 1 of the Constitution states, "No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President." Several constitutional amendments have been proposed in Congress to overturn this provision, enabling a naturalized citizen to seek the presidency after having been citizens for either 20 or 35 years.

<sup>83</sup> Alba 1990.

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Mr. HOSTETTLER. Dr. Fonte.

**TESTIMONY OF DR. JOHN FONTE, SENIOR FELLOW,  
THE HUDSON INSTITUTE**

Mr. FONTE. Thank you, Chairman Hostettler. I'm John Fonte, Senior Fellow at the Hudson Institute. My testimony today has the endorsement of the Citizenship Roundtable, an alliance of the Hudson Institute, and the American Legion. At this year's convention, the American Legion adopted a resolution encouraging Congress to enforce the oath of renunciation and allegiance and to reject dual citizenship in principle and restrict its application in practice. I would like to introduce the entire resolution, No. 165.

Mr. HOSTETTLER. Without objection.

[The information referred to is available in the Appendix.]

Mr. FONTE. America has had more success assimilating immigrants than any other country in the history of the world because since the early days of the Republic, we have pursued a policy of patriotic assimilation. At the heart of patriotic assimilation is the transfer of allegiance. For more than 200 years, immigrants have taken an oath renouncing prior allegiance and transferring sole political allegiance to the United States of America.

The transfer of allegiance is central to America because of the kind of country that we are. If we were a country that did not receive large numbers of immigrants, this would not be as important in practical terms, but it is precisely because we are a nation of assimilated immigrants that we must be serious about dual allegiance.

We are a civic, not an ethnic nation. American citizenship is not based on belonging to a particular ethnicity, but on political loyalty to American democracy. Regimes based on ethnicity support the doctrine of perpetual allegiance, for one is always a member of the ethnic nation. In 1812, Americans went to war against the concept of the ethnic nation and the doctrine of perpetual allegiance. At this time, Great Britain under the slogan "Once an Englishman, always an Englishman" refused to recognize the renunciation clause of our citizenship oath.

Today, some immigrant sending countries appear to be closer to the British position in 1812 than to the American position of a civic nation as opposed to an ethnic nation.

Dual allegiance violates a core American principle of equality of citizenship. Dual citizens are specially privileged, supra citizens who have voting power in more than one nation and special privileges like EU privileges that the majority of their fellow American citizens do not have.

I recently talked to a British immigrant who had become an American citizen while retaining British citizenship. This immigrant dual citizen cast ballots in 2004 in both the U.S. and British elections within 5 months of each other.

Now, most Americans instinctively recognize something is wrong with this situation and that it mocks our concept of equality of citizenship. Dual citizens exist in a political space beyond the U.S. Constitution. As members of foreign constitutional communities, they have different and, in some cases, competing and conflicting responsibilities, interests and commitments. By objective practical

necessity, as well as moral obligation, these other responsibilities, interests and commitments dilute their commitment and allegiance to the United States of America.

The great New Deal lawyer and Supreme Court Justice, Felix Frankfurter, was absolutely right when he said that voting in a foreign election and serving in a foreign government revealed “not only something less than complete and unswerving allegiance to the United States, but also elements of allegiance to another country in some measure at least inconsistent with American citizenship.”

Now, it’s sometimes argued even though the principle of retaining political loyalty to the old country is inconsistent with American democracy, the result is a good thing in practice because many immigrant dual citizens promote pro-American and democratic values in the elections of their birth countries. Now, this sounds reasonable, but it’s not always the case.

For example, dual citizen Manuel de la Cruz was elected to the Zacatecas legislature in Mexico as a member of the traditionally anti-American Democratic Revolutionary Party, the PRD of Mexico. If you look at the website of the California PRD, the political home to many naturalized American citizens, it contains untruths about the United States, including the charge that Mexican migrants live in the United States without human rights.

In 2003, the California PRD contained pictures not only of Che Guevara, but of Lenin as well. Here is a picture of Lenin on the California PRD website. So much for the promotion of American values.

The issue is clear. Should we continue to promote the rapid increase in dual allegiance, which will happen by default if no congressional action is taken, or should we reject dual allegiance in principle and practice? If enacted into law without changes, McCain-Kennedy would result in massive increases in the number of American citizens who have dual allegiance. This harms patriotic assimilation. This is the opposite of our great historical success.

What can be done? There’s plenty that can be done to restrict dual allegiance within the bounds of the *Afroyim* Supreme Court decision. Many acts, such as voting in a foreign election, can be made felonies. Exceptions for serving the national security interests of the United States could be made.

The purpose of such legislation is to affirm our deepest principles; it’s not to punish people who may be well meaning and following current practice. The legislation would not be retroactive, but simply say, from now on these are the rules. Legislation has been introduced today—I think at this very moment—by Congressman J.D. Hayworth, the Enforcement First Act, that will do exactly this in title 7 and restrict dual allegiance.

In opposing dual allegiance, we of the Citizenship Roundtable stand with the Founding Fathers, including both Hamilton and Jefferson, those political rivals, and also political rivals, Theodore Roosevelt and Democratic President Woodrow Wilson. We stand with Justice Louis Brandeis and his protege, Justice Felix Frankfurter, and with the administration of Franklin D. Roosevelt, which said, “Taking an active part in the political affairs of a foreign state by

voting in the election of that state involves a political attachment and practical allegiance thereto which is inconsistent with continued allegiance to the United States.”

For FDR yesterday and for Americans today this is simply common sense. Now is the time, during the current debate over immigration, for Congress to reject dual allegiance in principle and restrict and narrow its application in practice.

Thank you.

Mr. HOSTETTLER. Thank you, Dr. Fonte.

[The prepared statement of Dr. Fonte follows:]

PREPARED STATEMENT OF JOHN FONTE

**Testimony before the House Immigration Subcommittee September 29, 2005:  
“Dual Allegiance Harms Immigration Reform and Patriotic Assimilation”**

Statement by John Fonte, Ph.D.  
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Representing the Citizenship Roundtable, an alliance of the Hudson Institute and the American Legion

Thank you, Chairman Hostettler. I am John Fonte, a Senior Fellow at the Hudson Institute and director of the Center for American Common Culture. My testimony today has the endorsement of the Citizenship Roundtable, an alliance of the Hudson Institute and the American Legion, formed in 1999 to strengthen the integrity of the citizenship naturalization process and promote the patriotic assimilation of immigrants into the American way of life.

At this year’s national convention the American Legion approved a Resolution titled, “Oppose Dual Allegiance; Enforce Citizenship Oath.” Resolution No. 165 final paragraph declares:

“Now, Therefore, be it resolved, By The American Legion in National Convention assembled in Honolulu, Hawaii, August 23, 24, 25, 2005, That The American Legion encourage the Congress of the United States to enact measures to enforce the Oath of Renunciation and Allegiance and reject dual allegiance in principle and restrict and narrow its application in practice.”

I would like to introduce into the record the entire American Legion Resolution Number 165.

**(1) PATRIOTIC ASSIMILATION: THE REASON FOR AMERICA’S HISTORIC SUCCESS IN ASSIMILATING IMMIGRANTS**

Since the beginning of the Republic in the 18<sup>th</sup> century American political leaders have welcomed immigrants and at the same time insisted that they become loyal Americans. In 1794 President George Washington wrote to Vice-President John Adams on immigration policy. Washington deplored the situation in which newcomers would remain isolated in immigrant enclaves and cling to their old ways. He recommended that immigration policy encourage assimilation into the mainstream of American life and values so that immigrants and native-born Americans would “soon become one people.”

“[T]he policy... of its [immigration] taking place in a body (I mean settling them in a body) may be much questioned, for, by so doing, they retain the Language, habits and principles (good or bad) which they bring with them. Whereas by an intermixture with our people, they, or their descendants, get assimilated to our customs, measures and laws: in a word soon become one people.”

During the Washington Administration, the U.S. Congress passed the Naturalization Acts of 1795 requiring candidates for citizenship to satisfy a court of admission as to their “good moral character” and of their “attachment to the principles of the Constitution.” Moreover, the new citizens took a solemn



oath to support the Constitution of the United States and “renounce” all “allegiance” to their former political regimes.

Professor Thomas West of the University of Dallas and the Claremont Institute in *Vindicating the Founders* has noted that all the leading Founders, even long time ideological opponents Thomas Jefferson and Alexander Hamilton agreed that undivided political loyalty or what could be called patriotic assimilation was central to a successful immigration policy.

Thomas Jefferson insisted on assimilating newcomers into the American political regime because he worried that the “greatest number of emigrants” will come from countries whose political principles differed greatly from American principles. Unless Americans acted, Jefferson noted, “they will transmit to their children” these problematic political worldviews. In a 1790 speech to Congress on immigrant naturalization, Jefferson’s chief political lieutenant, James Madison, declared that America should welcome immigrants who could assimilate, but exclude the immigrant who could not readily “incorporate himself into our society.”

And Jefferson’s major political rival, Alexander Hamilton agreed with him and the other Founders on the necessity of patriotic assimilation. Hamilton declared that we should gradually draw newcomers into American life, “to enable aliens to get rid of foreign and acquire American attachment: to learn the principles and imbibe the spirit of our government.” Hamilton further maintained that the “safety” of a Republic “depends” upon a “love of country” and “the exemption of citizens from foreign bias and prejudice.” The ultimate success of the American regime, Hamilton insists, depended upon the “the preservation of a national spirit and national character” among native born and immigrant alike.

During the period of large scale immigration, in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, American leaders, like the Founding Fathers before them, promoted the patriotic assimilation of immigrants. The language of Theodore Roosevelt, Woodrow Wilson, and Louis Brandeis paralleled that of George Washington, Thomas Jefferson, and Alexander Hamilton in its insistence that newcomers assimilate to American values and give undivided loyalty to their new country.

Theodore Roosevelt declared that:

“In the first place we should insist that if the immigrant who comes here in good faith becomes an American and assimilates himself to us, he shall be treated on an exact equality with everyone else, for it is an outrage to discriminate against any such man because of creed, or birthplace, or origin. But this is predicated upon the man’s becoming an American, and nothing but an American... There can be no divided allegiance here. Any man who says is an American, but something else also, isn’t an American at all.... We have room for one soul (sic) loyalty and that is loyalty to the American people.”

Republican Roosevelt’s major political rival Democrat Woodrow Wilson favored a similar approach to the patriotic assimilation of immigrants. In 1915, President Wilson told a mass naturalization ceremony of new citizens:

I certainly would not be one even to suggest that a man cease to love the home of his birth... but it is one thing to love the place where you were born and it is another to dedicate yourself to the place in which you go. You cannot dedicate yourself to America unless you become in every respect and with every purpose of your will thoroughly Americans. You cannot become thoroughly Americans if you think of yourselves in groups. A man who thinks of

himself as belonging to a particular national group in America has not yet become an American, and the man who goes among you to trade upon your nationality is no worthy son to live under the Stars and Stripes.”

One day after President Wilson’s speech in 1915, his chief political lieutenant Louis Brandeis, reiterated the call for the “Americanization” or patriotic assimilation of immigrants declaring that “the adoption of our language, manners, and customs is only a small part of the [Americanization]process,” that ultimately newcomers should “possess the national consciousness of an American.” Interestingly, more than seventy years later, in addressing pending immigration legislation, Congresswoman Barbara Jordan (D-Texas) echoed the sentiments of Washington, Jefferson, Roosevelt, and Wilson and explicitly called for the “Americanization” of our latest immigrants. The concept of “Americanization,” may have sometimes been misused in the past, “But it is our word and we are taking it back,” Jordan declared.

## (II) THE TRANSFER OF ALLEGIANCE

For more than 200 years, immigrants upon becoming American citizens have taken an “oath of renunciation and allegiance,” renouncing previous allegiance and pledging allegiance to the United States of America. The promise that applicants for citizenship currently take to the United States and their new fellow citizens reads as follows:

“I hereby declare on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject of citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by law; that I will perform noncombatant service in the Armed Forces of the United States when required by law; that I will perform work of national importance under civilian direction when required by law; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God.”

The officially named “Oath of Renunciation and Allegiance” is a vital part, indeed, in some ways it is at the symbolic heart of patriotic assimilation. In taking the oath the immigrant is transferring allegiance from his or her birth nation to the United States of America. This “transfer of allegiance” is central to who we are as a people and vital to our proud boast that we are a “nation of immigrants.” It is central to who we are as a people because at the core of American self-government is the principle of government by “consent of the governed.” The first words of our constitution clarify that “the governed” are “We the People of the United States.”

In taking the Oath of Renunciation and Allegiance, the immigrant is voluntarily joining “We the People,” the sovereign American People. More significantly, by renouncing previous allegiance, the newcomer is *transferring sole political allegiance* from his or her birth nation—and from any other foreign sovereignty or political actor—to the United States of America. For more than two centuries, the renunciation clause, this “*transfer of allegiance*” has been a central feature of our nation’s great success in assimilating immigrants into what has been called the American way of life. To simply say that we are a “nation of immigrants,” is incomplete. We are, more accurately, a “nation of assimilated immigrants” and their descendants, whose sole political loyalty is—or at least, in principle and morally ought to be—only to the United States of America.

### (III) DUAL ALLEGIANCE IS INCOMPATIBLE WITH THE MORAL AND PHILOSOPHICAL BASIS OF AMERICAN CONSTITUTIONAL DEMOCRACY

Dual Allegiance is incompatible with the moral and philosophical basis of American constitutional democracy for two major reasons. First, dual allegiance challenges our core foundation as a civic nation (built on political loyalty) by promoting a racial and ethnic basis for allegiance and by subverting our “nation of (assimilated) immigrants” ethic. Second, dual allegiance violates a vital principle of American democracy: equality of citizenship.

### (IV) FIRST: DUAL ALLEGIANCE IMPLIES AND PROMOTES AN ETHNIC AND RACIAL BASIS FOR NATIONHOOD

The transfer of allegiance (*i.e.*, national loyalty) emanating from the renunciation clause of the oath of citizenship (and its clear moral rejection of dual allegiance) is central to America because of the kind of country that we are. Unlike many other countries our nationhood is not built upon American citizens belonging to a particular ethnicity, race, or religion, but, instead, upon political loyalty, *i.e.*, upon those citizens being loyal to American constitutional democracy. If we were a country that did not receive large numbers of immigrants this would not be as important in practical terms. But, it is precisely because we are a “nation of (assimilated) immigrants,” whose citizens come from all parts of the world, that we must be serious about enforcing the Oath of Renunciation and Allegiance, and about rejecting, on principle and in practice, the concept of dual allegiance.

As noted, this Oath—this transfer of allegiance—is at the heart of citizenship naturalization. Surely, most Americans would agree, that to retain allegiance to another nation (and another constitution) besides the American nation (and the American Constitution), and thus to continue to belong to another political community besides the American political community, is inconsistent with the moral and philosophical foundation of American constitutional democracy.

Regimes based on ethnicity and race adhere to the doctrine of “perpetual allegiance.” Thus, in this concept, one is always a member of the ethnic or racial nation. The United States (as a civic rather than an ethnic or racial) nation has consistently rejected this principle. In 1812 Americans went to war against the concept of the ethnic nation and the doctrine of “perpetual allegiance.” At the time, Great Britain, under the slogan “once an Englishman always an Englishman,” refused to recognize the “renunciation clause” of our citizenship oath and seized British-born naturalized American citizens from American ships, and impressed them into the British navy.

One major country in which citizenship traditionally has been based on race and ethnicity is Germany. The term *Volksdeutsch* means people of German ethnicity living outside Germany, who were traditionally considered part of the German people (*das deutsche Volk*), in the sense of a racially homogenous people. The German word *das Volk* is equivalent to the Spanish term *La Raza* (the Race). Traditional German immigration law afforded German citizenship to *Volksdeutsch*, including people who were ethnically German, but who do not speak German, had no knowledge of German culture, and who had never been in Germany.

Today, many countries that send large numbers of immigrants to the United States support the concepts of ethnic-based nationhood and perpetual allegiance—and are attempting to maintain the loyalty of those immigrants. Professor Stanley Renshon describes this phenomenon: “increasingly, governments of dual-citizen sending countries are taking steps to ensure that the loyalties and attachments that many immigrants feel for their country of origin are maintained and even stimulated.”

**(V) SECOND: DUAL ALLEGIANCE VIOLATES ONE OF OUR MOST FUNDAMENTAL VALUES: THE CORE PRINCIPLE OF EQUALITY OF CITIZENSHIP**

Besides challenging our conception of ourselves as a civic (rather than ethnic or racial) nation, dual allegiance contradicts our core principle of equality of citizenship. Our nation's principles—what could be called our “constitutional morality”—tell us that “We the People of the United States,” the American people, consist of individual citizens with equal rights and responsibilities. Equality of individual citizenship in a government based on constitutional liberty and the consent of the governed (self-government) is central to America's liberal democratic regime.

The concept of dual allegiance and “dual citizenship,” that is to say, individuals belonging to several “peoples,” (and thus, several political communities) at the same time, is clearly inconsistent with the moral and philosophical foundation of American constitutional democracy. For one thing, dual citizenship violates a core American principle of equality of citizenship. It means that some individuals (dual citizens) are more equal than others (American “single” citizens).

For example, we believe in the principle of “one person, one vote.” An American, with homes and legal residences in both Indiana and California, does not vote for President in both states. He or she is not permitted to vote in both the Indiana and California Gubernatorial and Senatorial elections, or for two different Congressmen. Double voting within American constitutional democracy is forbidden by law and is a clear violation of the principle of equality of citizenship. It violates what I have called our “constitutional morality.”

What about double voting outside of American constitutional democracy? Let us examine the “constitutional morality” of this issue. I recently talked to a British immigrant who had become an American citizen, while retaining “allegiance to the Crown,” or British citizenship. The immigrant dual citizen was a double voter in 2004, casting ballots in both the United States Bush-Kerry Presidential contest and Great Britain's Blair-Howard election within five months of each other. In this case, did the dual citizen do anything morally wrong (in the sense of violating the constitutional morality of American democracy)?

Yes. (1) He violated the Oath of Citizenship in which he had promised to “absolutely and entirely renounce all allegiance” to his birth nation. (He had a moral obligation to take this oath seriously regardless of any legal loopholes that currently exist).

(2) He participated in and expressed loyalty (explicitly and implicitly) toward two different constitutions (the American constitution and the British constitution) and exercised the rights of membership in two different peoples (the American people and the British people). The dual citizen, in this case, could be described as a type of “civic bigamist,” whose allegiance and loyalty included another constitutional regime besides the United States.

The fact that Britain is a liberal democracy and (perhaps our closest ally) does not alter the moral principle or practical consequences involved in this situation. After all America is a different nation than Britain, Canada, India, Chile, or any other democratic nation. Our constitution, interests, principles, history, and culture, while similar to that of Britain and other democracies, are not identical or interchangeable. Immigrants in becoming Americans (and native-born citizens) are supposed to be loyal to the American constitution and the American liberal democratic regime, not simply to a generic form of democracy, detached from the American nation. I suspect (although I have seen no data on this) that

most Americans believe in civic monogamy—that is to say, the principle that an American citizen should be loyal only to the United States and to no other country.

The concept of the hyphenated-American (Irish-American, Italian-American, Mexican-American, Japanese-American) has been in our mainstream culture for a long time. That is, the idea that recent immigrants retain customs and affection towards their birth nations and that, therefore, ethnic subcultures exist within a mainstream American culture. This view has been widely accepted both descriptively (as a fact) and, for the most part, normatively (as a positive, or at least, benign, value). Nevertheless, it is particularly significant that two leading immigration law professors writing in a *Wall Street Journal* op-ed in 1998 welcome the replacement of the hyphen with the ampersand.

Thus, for example, according to the law professors, the hyphenated Mexican-American or, in the specific case that we are examining, the British-American, (i.e., a loyal American of Mexican or British descent), will be replaced by someone who is both Mexican & American or British & American, voting in two countries and simultaneously “loyal” to both America and a foreign government. Clearly, unless action is taken by the Congress and the Executive, the continuing increase in dual citizenship will exacerbate this tendency of strengthening the ampersand and weakening the hyphen.

(3) The immigrant dual citizen in the example listed above violated the principle of equality of citizenship. He exercised the special privilege of double voting, a right not available to most Americans. To wit, most American citizens did not vote in the British elections of 2004, a privileged few did. In 2006 Mexico will have a Presidential election and again some American citizens (a special category of citizens) will be double voters, casting ballots for the President of Mexico and for a Senator, Governor, and Congressman in American state elections.

Double, or in some cases multiple, voting in different nations could be (and, indeed, has been) characterized as “neo-Medievalism.” Dual citizens are like pre-modern medieval aristocrats. They are privileged “supra-citizens.” Like aristocrats in the Middle Ages such as the Electors in the Holy Roman Empire they have voting power in more than one government and are supposedly “loyal” to more than one regime.

Of course, the 18<sup>th</sup> century American Founders intellectually and morally rejected the medieval (and feudal) political order of kings, princes, and aristocrats, in favor of the modern vision of ordered liberty and equality of citizenship (a “new science of politics,” as the *Federalist Papers* puts it). Thus, as historian Gordon Wood has pointed out, the upper house of the national legislature (the American Senate) was not, unlike its British counterpart, established to represent an aristocracy and the lower house to represent the people. It is ironic that some 21<sup>st</sup> century American law professors seem to prefer a pre-modern, pre-Enlightenment, ill-liberal concept of dual (and even multiple) citizenships to the modern democratic republican views of the Founders of “single” citizenship. The Founders view was made explicit in 1795 Congressional legislation requiring naturalized citizens to “renounce” all prior allegiances.

It could also be noted that, in practical terms these specially privileged “supra-citizens” will by definition, have less time for civic participation in American public life, since they have political obligations (e.g. voting) and political allegiances in another (and foreign) political community. In terms of obligation and commitment then, these dual citizens are cheating their fellow “single” citizens in both countries. They cannot politically give themselves wholly to the United States; they consciously hold something back.

Some argue that dual political allegiance is no different than a variety of allegiances that people hold simultaneously. It is argued that one is a member of the Yale Club, and the Harvard Club, one is Catholic or Jewish, one is a New Yorker or Californian, one is American or Canadian—and that is possible, in today complex and interdependent world, to hold a series of loyalties at the same time, without a great deal of difficulty. What these apologists for dual allegiance continually do is to mix “apples and oranges.” Of course, it is possible to be a scientist, Jewish, a Californian, a member of both the Harvard and Yale club, and an American.

Nevertheless, in rebutting the dual allegiance advocates, Professor Stanley Renshon of Columbia notes that some identities are more important than others, and some identities are incompatible with each other. It is not possible to be Jewish and Catholic or Jewish and Muslim at the same time. Nor is it possible to seriously be a loyal citizen of the American Republic and the French Republic (or even Britain or Canada) at the same time. As noted earlier, even the closest of democratic allies do not have identical interests and principles. Like an “ampersand” religious believer, an “ampersand” political citizen, is trying to square an impossible circle, ultimately one identity or the other (and usually both) is being short-changed.

About a decade ago, syndicated columnist Georgie Anne Geyer in a prescient book *Americans No More: The Death of Citizenship*, lamented: “Dual citizenship? America has now made it possible, thus diluting a person’s commitment and making citizenship akin to bigamy.” She warned, “the idea and practice of citizenship in America may for all intents and purposes die in our lifetimes unless we act to reverse certain trends...”

#### **(VI) MEXICAN GOVERNMENT POLICIES DIRECTLY CHALLENGE THE PATRIOTIC ASSIMILATION OF IMMIGRANTS**

Among immigrant-sending countries Mexico is unique. It sends the largest number of immigrants (approximately 30% of all total immigration); the largest number of illegal immigrants (estimated five to six million of ten million illegal); it lost a large chunk of its national territory in the 19<sup>th</sup> century to the colossus to the north; and, of course, it shares a 2,600 mile border with the United States.

In the 1990s, Mexico changed its strategy towards the United States (*e.g.*, greater economic integration, support for NAFTA, *etc.*) and towards Mexican-Americans, seeking to build closer relations with both. One of the tools of this new strategy was the slow, steady, but increasing promotion of dual allegiance for Mexican-Americans—the promotion, essentially, of the “ampersand”; and the effort to create a transnational political space and identity.

Shortly before the Mexican Congress enacted its first version of the dual nationality law allowing many Mexican-American citizens to possess dual US-Mexican nationality, Linda Chavez voiced concerns in her syndicated column:

“Never before has the United States had to face a problem of dual loyalties among its citizens of such great magnitude and proximity. Although some other countries—such as Israel, Columbia, and the Dominican Republic allow dual nationality—no other nation sends as many immigrants to the United States nor shares a common border. For the first time, millions of U.S. citizens could declare their allegiance to a neighboring country.”

Chavez further explains that a series of measures, laws and tendencies, including the 1967 Supreme Court decision ending involuntary loss of citizenship for voting in a foreign election have help diminish American national loyalty:

“All of these changes, no doubt erode loyalty to the United States but, until now, have involved relatively few people. What is significant about the change in Mexican law is its potential to affect so many newcomers at a time when other pressures also diminish attachment to the immigrants’ adopted nation. Unlike previous immigrant groups, Mexicans travel only a short distance...they can travel easily back and forth, keeping ties to their homeland stronger, but many live in immigrant enclaves in the U.S. where Spanish is heard more frequently than English...”

Let us examine Mexican government actions in some detail. In 1995, the *New York Times* reported that Mexican President Ernesto Zedillo told a group of American politicians of Mexican descent in Dallas, Texas, “You’re Mexicans—Mexicans who live north of the border.” One of the elected officials who attended the Dallas meeting, Robert R. Alonzo, a Texas state representative, said, “There’s been a clear change of policy. Before the Mexican government didn’t want to be seen as interfering in the U.S., but now they’ve understood the importance of building ties.” University of Texas Professor Rodolfo O. de la Garza commented on the purpose of Zedillo’s new policy to the *Times*: “the Mexican government want them [Mexican-Americans] to defend Mexican interests here in the United States.”

Two years later in 1997, Zedillo addressed the annual National Council of La Raza convention in Chicago, the first time a Mexican President spoke before a major Latino-American organization. According to the Copley News Service: “In a stirring address, delivered in impeccable English to a crowd of more than 2,000, Zedillo evoked feeling of patriotism and pride in Mexican roots.” He told the La Raza conventioners: “I have proudly affirmed that the Mexican nation extends beyond the territory enclosed by its borders...”

Like Zedillo, Mexico’s current president, Vicente Fox, repeatedly says that the Mexico nation extends beyond its borders. Under Fox, the official website of the President of Mexico ([www.presidencia.gob.mx](http://www.presidencia.gob.mx)) on July 16, 2002, stated that Cabinet member, Juan Hernandez, head of the Office for Mexicans Abroad had “been commissioned to bring a strong and clear message from the President [Vicente Fox] to Mexicans abroad—Mexico is one nation of 123 million citizens—100 million who live in Mexico and 23 million who live in the United States—and most importantly to say that although far, they are not alone.” On August 23, 2001 in El Paso, Texas, Hernandez stated “We are a **united** nation,” while referring to the “Mexican population” as “100 million within the borders [of Mexico] and 23 million who live in the United States” (including, of course, millions of American citizens).

In 1997-1998 when Mexico changed its Constitution to permit Mexican immigrants in the United States to retain Mexican nationality. Committee Chairman Senator Amador Rodríguez Lozano explained the philosophical significance of what Barnard College Sociology Professor Robert C. Smith called the “redefinition of the Mexican Nation:”

“Fellow senators: the reports [on dual nationality] that we present today have historical importance, because they complete a qualitative change in the judicial conception that until now, we have had of Mexican heritage. It signifies the recognition that nations are more than concrete, specific territorial resources. The reports recognize that Mexicans abroad are equal to those of us who inhabit Mexican national territory. Belonging to Mexico is fixed

in bonds of a cultural and spiritual order, in customs, aspirations and convictions that today are the essence of a universally recognized civilization.”

The goal of this conceptual “redefinition of the Mexican nation” appears to be to gain the allegiance of Mexican-Americans. Juan Hernandez, Fox’s Cabinet Minister for the Presidential Office of Mexicans Abroad from 2000-02 (a dual citizen born in Ft. Worth, Texas, of a Mexican father and an American mother), was quite candid about the end-goal of Mexican strategy. On June 7, 2001, Hernandez told ABC’s Nightline, “we are betting,” that Mexican-Americans who are American citizens will “think Mexico first, even to the seventh generation.” On July 11, 2001, he told the *Denver Post*, that Mexican immigrants to the United States “are going to keep one foot in Mexico” and that they “are not going to assimilate in the sense of dissolving into not being Mexican.”

The grand tactics of the new policy were articulated shortly before Vicente Fox became President of Mexico by the late Adolfo Aguilar Zinser, at the time, Fox’s future national security advisor. Writing in *El Siglo de Torreon* on May 5, 2000, Zinser advocated that the Mexican government work with “20 million Mexicans” in the United States to advance Mexican “national interests.” Zinser criticized American efforts to halt illegal immigration. He stated that “Mexicans [i.e., illegal aliens crossing the border] are subjected every day to mean spirited acts and their rights are permanently threatened by ambitious politicians who are hunting for the Anglo vote.” Zinser, attacked “reactionary Senator Jessie Helms” and recommended that Mexico, “find allies in the US political system” particularly on the left among “Liberal Democrats, labor unions, civil rights organizations, and social movements.”

In practice for more than ten years the Mexican government has been deeply involved in issues of American domestic politics: vigorously promoting particular policies, working with special interest groups, and lobbying state legislatures. The Mexican government strongly opposed Proposition 187 in California prohibiting using non-emergency public funds, including education money for illegal immigrants; and Proposition 227 in California that promoted learning English and restricted bi-lingual programs that emphasized Spanish acquisition over English.

In opposing Proposition 187 the Mexican government coordinated the meeting of the Zacatecas Federation of Los Angeles, California with Zacatecas Federation of Chicago, Illinois, and facilitated the financial contribution of the Chicago group to the anti-Proposition 187 cause in California. As Barnard professor Robert C. Smith put it, “The theoretically interesting thing is that these are two groups organized within US civil society on the basis of their common origin in a Mexican state [Zacatecas], being brought together by the Mexican [nation] state and then participating together in American politics in two different American states.”

In recent years Mexican government lobbyists in state capitols throughout the United States have strongly advocated drivers licenses and special identification documents (*matricula consular*) for illegal immigrants. Technically the *matricula consular* or Mexican consulate ID card would be for any Mexican citizen, legal or illegal, but if one is here legally with a visa or passport, it is not necessary to have a *matricula consular*. So, in effective, there is no reason to have such a document unless one is illegally in the United States.

In 2004, the Mexican government opposed Arizona’s Proposition 200 that forbid all but emergency funds going to illegal immigrants. Although this measure passed overwhelming (by 56% of the vote, including 47% of Latino voters, according to CNN) the Mexican government has even joined with American advocacy groups (including MALDEF, the Mexican American Legal Defense and Education Fund) in a lawsuit to overturn the decision of the citizens of Arizona.



At the same time, the Mexican government with the acquiescence and support of some American educational officials in American public schools, is cultivating dual allegiance among Americans of Mexican descent. For example, the February 26, 2002 issue of *The Californian* (Salinas) reported that a local elementary school was visited by Mexico Counsel-General in San Jose, Marco Antonio Alcazar. The Mexican national anthem was played and Alcazar told Mexican-American fifth and sixth graders that they had the right to automatically obtain Mexican citizenship. Promoting the concept of the “ampersand,” the Mexican diplomat stated that: “This is exciting because there are many children, who were born in the United States, whose parents are Mexican. And these children have the opportunity now to enjoy different nationalities and be proudly American and proudly Mexican.” The Mexican diplomat gave the California school “complete collections of educational books from the Mexican government, intended to help the students understand Mexican history and culture.”

Mexican legislative bodies have reserved seats for deputies representing “Mexicans living in the United States.” This would make sense, except for the fact that the term “Mexicans living in the United States” is interpreted to include naturalized American citizens and their American-born children, instead of, as one would assume, simply Mexican legal residents of the United States. For example, on July 4, 2004, Manuel de la Cruz, a naturalized American citizen from the Norwalk section of Los Angeles, California, was elected to the State Legislature of the Mexican State of Zacatecas. Thirty-three years earlier de la Cruz had emigrated from Mexico to the United States. He eventually became an American citizen and took an oath of allegiance in which he promised to “absolutely and entirely renounce all allegiance and fidelity” to any “foreign state or sovereignty.” Of course, when Mr. de la Cruz took his seat in the Zacatecas Legislature, as a new elected official, he took an oath of allegiance to the Mexican republic.

It is sometimes argued that even if the principle of retaining political loyalty to the “old country” is inconsistent with the moral basis of American democracy, the result is a good thing in practice because immigrant dual citizens promote “pro-American” and “democratic” values in elections in their birth countries. This sounds reasonable, but is not necessarily the case.

For example, Mr. de la Cruz was elected as member of the traditionally anti-American, Democratic Revolutionary Party (PRD). The website of the California PRD, the political home of many naturalized American citizens, contains blatant lies about the United States, including the charge that “the Mexican migrant who lives abroad [in the US] is a citizen without human rights” and efforts to get the US “to treat them as human beings” has “not been heard in the structures of American government.” This is a gross falsehood. As anyone who has lived in the United States should know, all residents of this country, citizen and non-citizen, legal and illegal, have the rights of indigent medical care, free public schooling for their children, access to the courts, and a whole array of constitutional liberties. In 2003, the California PRD website contained pictures not only of Che Guevara, but of V.I. Lenin as well. So much for the promotion of “American values.”

The long term ideological vision of President Vicente Fox was stretched out in a speech on “Mexican Foreign Policy in the 21<sup>st</sup> century” delivered in Madrid, Spain in 2002. Fox declared:

“Eventually, our long-range objective is to establish with the United States and Canada, our other regional partner, an ensemble of connections and institutions similar to those created by the European Union, with the goal of attending to future themes as important as the prosperity of North America, and the freedom of movement of capital, goods, services, and **persons**. This new framework we wish to construct is inspired in the example of the European Union.”

Moreover, Fox made it clear that he did not stand with the United States on issues of vital importance to American democratic sovereignty. In this regard, he warned the Europeans that, “we [Mexicans and Europeans] have to confront... what I dare to call Anglo-Saxon prejudice against the establishment of supranational organizations.” Anglo-Saxon prejudice would presumably mean American (and, in some cases, British) support for the concept of national democratic self-government (or the liberal democratic nation-state) over transnational institutions such as the UN, the EU, the International Criminal Court, and other supranational bodies.)

Fox further stated that Mexican political principles were closer to the Continental European model than the American system. He declared that “Mexico is closely linked with European nations for historical reasons and because of cultural affinity... it is logical that Mexico approach Europe. We have an identity of values which unites us with the European nations, even more than with our neighbors of North America.” In addition, Fox suggested that Mexico stood with the Europeans (and implicitly not with the US) on issues such as Kyoto Protocol (on global climate issues), and on the UN Durban Conference (that became an anti-Semitic and anti-Israeli hate fest and called for slavery reparations from the US).

It appears that President Fox and leading members of the Mexican elite envision a closely integrated North America in both economic and political terms, in which dual citizenship would be a natural outcome (and, indeed, a tool) in the creation of EU-style transnational arrangements that would ultimately supercede both American and Mexican national constitutions. If one is interested in a quick overview of this imagined future, a glance at the website of the Pacific Council on International Policy of Los Angeles will suffice.

The Pacific Council has held a series of conferences on “Envisioning North American Futures: Transnational Challenges and Opportunities.” Participants included leading figures from the Mexican elite such as Carlos Gonzalez-Gutierrez (Executive Director, Institute of Mexicans Abroad), Ambassador Andres Rosental (former Mexican Ambassador to the United States), Carlos Manuel Sada Solana (Counsel-General of Mexico in Chicago), Dr. Ruben Puentes (Regional Representative of the Rockefeller Foundation in Mexico City); as well as leading American and Mexican academics and activists: including Antonia Hernandez (MALDEF), Jeannie Butterfield (American Immigration Lawyers Association), Robert Pastor (former Assistant Secretary of State, and a leading promoter of North American integration), Congressman Xavier Becerra, and others.

The Pacific Council project trumpets a politically integrated “transnational” future, declaring that: “Mexicans, Americans, and Canadians are acting increasingly as ‘North Americans’ with a transnational identity and a common vision.” Moreover, “US residents of Mexican origin are campaigning for elective office in Mexico, taking advantage of the dual nationality provision in place since 1998.... Cross-border activism raises key questions regarding citizenship, sovereignty and the emergence of transnational political identities.”

The solution to these problems, the Pacific Council insists, will “require” a “bi-national” (sometimes “tri-national”) and certainly, “transnational” approach. “We want to chart alternative scenarios for how North America might evolve—politically, economically, socially, culturally, and institutionally—in the coming 10-15 years,” the Pacific Council project tell us. Implicit in this social science language is the notion that the traditional American self-government or democratic sovereignty must ultimately be subordinated to new transnational institutions in which political decision making will be bi-national (or tri-national), but not “national” (that is to say, not solely within the framework of the US Constitution).

In other words, what is envisioned by Mexican elites and their American allies is not (as some would have it) a crude attempt at "*reconquista*" (or a reconquest of the American Southwest), but a sophisticated and long term strategy similar to the approach promoted by leaders of the European Union (EU) and other global and transnational elites, of slowly and steadily building a series of institutions and structures that would lead to greater and greater political integration in North America—and thus, by definition, a weakening of American constitutional sovereignty.

They envision, what Mark Krikorian of the Center for Immigration Studies has called a North American Condominium of "shared sovereignty" in the borderlands and among the large Mexican American population in the United States, who would be dual citizens ("ampersands") and have dual allegiance to the United States and Mexico. This would be a new type of post-U.S. Constitutional (and essentially "post-American") political arrangement. In the final analysis, it would be a new type of transnational political regime, different from the liberal democratic nation-state.

#### **(VII) MEXICAN GOVERNMENT POLICIES TODAY COMPARED WITH ITALIAN GOVERNMENT POLICIES YESTERDAY: SIMILARITIES AND DIFFERENCES**

Michael Barone has examined what he calls "a close, almost uncanny resemblance between the Italian immigrants who arrived in the United States in great numbers from 1890 to 1924 and the Latino [predominately Mexican] immigrants who began arriving in great numbers in the late 1960s." Both groups of immigrants were characterized by an emphasis on family, religion, and hard work. Moreover, Barone tell us, they both came from mostly Catholic rural areas with problematic political institutions and (unlike yesterday's Jewish and today's Asian immigrants) embraced manual labor and entrepreneurial self-employment, rather than higher education, as the means of social mobility, at least, in their beginning years in the new country. Barone writes: "By the 1970s, Italians were thoroughly interwoven into the fabric of American life. It took eighty years." For Latinos, he contends: "With luck, it will take less than eighty years."

Another similarity, that Barone noted for Italians, but didn't examine for Latinos (and Mexicans) is the historical success of the patriotic assimilation of both immigrant groups. For Italian-Americans the epitome of patriotic assimilation occurred during World War II when Americans of Italian descent were engaged in combat against Italian soldiers on the battlefields of North Africa and Sicily.

The successful patriotic assimilation of Mexican immigrants prior to the post-1960s immigration era is described by classicist Victor Davis Hanson in an insightful memoir that recalls his Mexican-American friends, neighbors and relatives.

Hanson writes of the predominately Mexican-American public school he attended in Selma, California, where the old assimilationist model worked. The students learned a "tough Americanism" with "biographies of Teddy Roosevelt, stories about Lou Gehrig, recitations from Longfellow, demonstrations of how to fold the flag, a repertoire of patriotic songs to master." Professor Hanson "can still remember" his fellow students singing "God Bless America" with the "Spanish accented refrains of 'Stand beside her.'" He notes that the end result of this deliberate (and sometimes crude) assimilation policy was a Selma, California run by assimilated patriotic Mexican-Americans, Hanson's friends, neighbors, and in-laws.

Hanson declares: "Almost all of those from my second-grade class are today's teachers, principals, business men and women, and government employees. If the purpose...[of an assimilation policy] was to turn out true Americans of every hue, and to instill in them a love of their country and a sense of personal responsibility, then the evidence forty years later would say that it was an unquestionable success."

Now, let us examine other similarities between Italian immigration in the past and Mexican immigration today, specifically the policies of the sending governments. Interestingly, Italian government policies (circa 1900s-1930s) paralleled those of the Mexican government (1990s-2000s)—both attempted to maintain the allegiance of their emigrants to the United States, supported dual nationality, and tried to use their former compatriots as political leverage upon the United States.

Just as the Mexican government established the Presidential Office for Mexicans Abroad to promote close ties between the government and its emigrants, the Italian government had established the General Bureau of Italians Abroad for the same purpose. Just as Mexican consuls are active in American politics today, so were Italian consuls active in American politics in the past, including both representatives of the pre-Mussolini liberal government and the later Mussolini regime. Just as the Mexican government has established 21 Cultural Institutes in the US to foster ties with Mexican immigrants and in the words of the then Foreign Relations Secretary Fernando Solana act as "political agents" contributing to Mexico's foreign policy goals—the Italian government established similar cultural institutions (e.g., the Italian Veterans Association) to foster Italian foreign policy interests. Just as the Mexican government redefined membership in the Mexican nation to include "Mexicans living abroad" even those who had become American citizens—the Italian government redefined the concept "emigrant." Italian emigrants were no longer considered "emigrants," but "citizens" (as Mussolini put it, "an Italian citizen must remain an Italian citizen.")

Let us make some other comparisons.

**Mexican Government.** In 2000, Alfonso Zinser, future national security advisor under Vincente Fox, advocated that the Mexican government work with Mexican American immigrants to promote Mexican "national interests." **Italian Government.** In 1928 the Italian Ambassador to the United States, Signor Rolandi-Ricci, toured Italian-American immigrant communities urging Italian immigrants to "become naturalized so that they could cast their ballots unitedly to foster Italian interests."

**Mexican Government.** In 2001 Juan Hernandez told ABC Newsline, "We are betting" ...[Mexican-Americans] will think Mexico first, event to the seventh generation." **Italian Government.** In 1929 Benito Mussolini declared: "My order is that an Italian citizen must remain an Italian citizen, no matter in what land he lives, even to the seventh generation."

**Mexican Government.** In 2001 Juan Hernandez, Mexican Cabinet officer, "Mexico is one nation of 123 million who live in Mexico and 23 million who live in the United States." In 1997, the Mexican Senate, "The reports recognize that the Mexicans abroad are equal to those of us who inhabit Mexican national territory. Belonging to Mexico is fixed in bonds of a cultural and spiritual order, in customs, aspirations and convictions that today are the essence of a universally recognized civilization."

**Italian Government.** In 1929 Arnaldo Mussolini (the Duce's brother) wrote in the official *Popolo d'Italia* "Ten million Italians live in foreign lands. This is another national community ...which has a sacred duty to accomplish; that of preserving the soul and the national character of the coming generations....the sons of Italians abroad should be brought up to feel, to think, to love, to act, to hope as do the sons of Italians at home."

**Mexican Government.** In 2001, Juan Hernandez declares that Mexican immigrants to the US are “going to keep one foot in Mexico,” they “are not going to assimilate in the sense of dissolving into not being Mexican.” **Italian Government.** In 1929 Arnaldo Mussolini writes, “ Young people are the prey sought by preference by the nations eager to assimilate foreigners....The guardianship of young Italians abroad is a matter of greater importance...it is a measure of national defense.”

**Mexican Government.** In 2000 Alfonso Zinser writes that the Mexican government and Mexican-Americans should “find allies in the US political system” among “Liberal Democrats, labor unions, civil rights organizations, and social movements.” **Italian Government.** In 1933 Italian Consul in Baltimore, Mario Orsini Ratto declares in an Italian-American newspaper *L'Avvenire degli Italo-Americani*, “Italo-Americans can, in a ten-year period of serious organization, become a formidable electoral and financial force and offer unprecedented opportunities for intellectual and economic influence.”

Like the Mexicans today Italian politicians in the past promoted the concept of dual allegiance, but unlike the Mexicans of today they were unsuccessful because of opposition from the United States. It is important to note that, in addition to the politicians at home, many Italian immigrants to the United States in the past (just as many Mexican immigrants today) favored dual citizenship. The Italian government-funded Instituto Coloniale convened the first and second “Congress of Italian immigrants” in 1907 and 1911 during which Italian immigrants urged the home government to promote dual citizenship for Italians in America. In a similar vein, many leaders of Mexican immigrant community in the US, particularly representatives of the Zacatecan Federation of Clubs, have pushed for dual citizenship and double voting.

All of this reminds us that assimilation is difficult and that it does not just happen naturally, or by chance. Human nature remains; Italian immigrants in the past and Mexican immigrants today acted in similar manner. Moreover, the Italian government in the past acted, and the Mexican government today acts in a similar manner. They are doing what governments usually do: seeking to maximize their national interests in relationship to other governments. What is different now is that in the past the American government actively promoted our national interests in patriotic assimilation and the rejection of dual allegiance, today our government and elites are essentially mute on these critical issues.

Clearly, there are a range of important differences between Italian immigration in the past and Mexican immigration today. Italy did not have a 2,600 mile border with the United States. Italian immigrants had to cross the Atlantic Ocean in an age when communication with the old country was much more difficult. There was no bi-lingual or multicultural education for the children of Italian immigrants. Italian immigrants did not represent (as Mexicans do today) a disproportionately large percentage (approximately 30%) all immigrants. Italian was not the language of half of all immigrants as Spanish is today.

In addition, the immigration restriction legislation of the 1920s had the practical effect of fostering assimilation among Italian immigrants. Finally, in the past, of course, there was no large body of illegal aliens from any country, as there is today.

Nevertheless, while the above are all important differences between then and now. I would argue that one of the most important differences is the attitude of American elites and the American regime. Italian immigrants and other immigrants assimilated in the past, not because it was easy or natural, but because we as a nation insisted upon Americanization and patriotic assimilation. Ultimately that insistence—including the promotion of Americanization and the rejection of dual allegiance, facilitated patriotic assimilation and proved to be a great gift to the immigrants from Italy. We owe today's

Mexican immigrants the same concentrated attention in fostering patriotic assimilation that was applied to the Italians and all the other immigrants that came through Ellis Island. Today's new arrivals from Mexico, Central America, Asia and everywhere else deserve nothing less.

**(VIII) THE WARREN COURT (5-4) DECISION OF 1967 IN *AFROYIM V RUSK* OVERTURNS TWO HUNDRED YEARS OF TRADITIONAL AMERICAN PRACTICE TOWARDS DUAL ALLEGIANCE**

Prior to 1967 American citizens who committed certain "expatriating acts," including voting in foreign elections, serving in foreign governments, and swearing allegiance to foreign powers, could through the commission of these acts, involuntarily lose their citizenship. In the early 1930s President Franklin D. Roosevelt at the request of Congress established a Cabinet Committee consisting of his Secretary of State, Attorney-General, and Secretary of Labor to review all the scattered nationality laws of the United States going back more than one hundred and fifty years and codify them in one comprehensive statute to submit to Congress.

Drawing upon older laws and crafting new requirements, FDR's Cabinet Committee recommended that the US citizens would lose their citizenship if they performed any of the following acts: "...becoming naturalized in a foreign country; taking an oath of allegiance to a foreign state; being employed by a foreign government in a post for which only nationals of that country are eligible; voting in a foreign political election or plebiscite; using a passport of a foreign state as a national thereof..."

In support of the recommendation that for voting in a foreign election one should lose their citizenship, President Roosevelt's committee declared:

"Taking an active part in the political affairs of a foreign state by voting in a political election therein is believed to involve a political attachment and practical allegiance thereto which is inconsistent with continued allegiance to the United States, whether or not the person in question has or acquires the nationality of the foreign state. In any event it is not believed that an American national should be permitted to participate in the political affairs of a foreign state and at the same time retain his American nationality. The two facts would seem to be inconsistent with each other."

In June 1938, President Roosevelt submitted the Cabinet Committee recommendations to the Congress, most of which became law with the passage of the Nationality Act of 1940. Congress was thus heavily guided by advice from the Roosevelt Administration.

In 1958, the Supreme Court in *Perez v. Brownell* upheld the section of the Nationality Act of 1940 which provided that an American voting in a foreign political election would lose his citizenship. The petitioner had asked the court to rule this section of the Nationality Act unconstitutional on the grounds of the 14<sup>th</sup> Amendment. In *Perez* the Supreme Court held that "There is nothing in the language, the context, the history or the manifest purpose of the Fourteenth Amendment to warrant drawing from it a restriction upon the power otherwise possessed by Congress to withdraw citizenship."

Former New Deal lawyer Justice Felix Frankfurter wrote the majority decision. He reviewed the legislative and executive branch history of nationality laws including the 19<sup>th</sup> century treaties permitting involuntary forfeiture of citizenship; the recommendations of the Citizenship Board of 1906 (which stated that "no man should be permitted deliberately to place himself in a position where his services

may be claimed by more than one government and his allegiance be due to more than one"); the Expatriation Act of 1907, and the Franklin Roosevelt Administration-inspired Nationality Act of 1940. Justice Frankfurter declared:

"...the fact is not without significance that Congress has interpreted [356 U.S. 44, 61] this conduct, not irrationally, as importing not only something less than complete and unswerving allegiance to the United States but also elements of an allegiance to another country in some measure, at least, inconsistent with American citizenship."

Frankfurter concluded: "It cannot be said then, that Congress acted without warrant when, pursuant to its power to regulate the relations of the United States with foreign countries, it provided that anyone who votes in a foreign election of significance politically in the life of another country shall lose his American citizenship. To deny the power of Congress to enact the legislation challenged here would be to disregard the constitutional allocation of government functions that it is this Court's solemn duty to guard."

Nevertheless, in 1967, the Supreme Court in *Afroyim v. Rusk*, overruled *Perez* and declared that "Congress has no express power under the Constitution to strip a person of citizenship.... The Fourteenth Amendment's provisions that 'All persons born or naturalized in the United States... are citizens of the United States...' completely controls the status of citizenship'..." The majority drew somewhat upon Chief Justice Earl Warren's dissent in *Perez* arguing that the 14<sup>th</sup> Amendment prohibited Congress from taking citizenship from anyone without their intent to relinquish American citizenship. Justice Hugo Black wrote for the 5-4 majority stating that, "the [14<sup>th</sup>] Amendment can most reasonably be read as defining citizenship which a citizen keeps unless he voluntarily relinquishes it. Once acquired this Fourteenth Amendment citizenship was not to be shifted, canceled, or diluted at the will of the Federal Government, the States, or any other governmental unit."

Justice Black noted that the "chief interest" of the sponsors of the 14<sup>th</sup> Amendment was to protect the citizenship rights of African-Americans. They feared the Civil Rights Act of 1866 was not enough because it could be reversed by a future Congress. Black quotes the Amendment's chief Senator sponsor, Howard of Michigan, as explaining the purpose of a constitutional definition and grant of citizenship:

"It settles the great question of citizenship and removes all doubts as to what persons are or are not citizens of the United States... We desired to put this question of citizenship and the rights of citizens... under the civil rights bill beyond the legislative power...." [Ellipses by Black]

Justice John Harlan wrote a stinging dissent in *Afroyim* supported by Justices Clark, White, and Stewart. Harlan declared:

"The Court today overrules *Perez* and declares 401 (3) unconstitutional, by a remarkable process of circumlocution. First, the Court fails almost entirely to dispute the reasoning in *Perez*; it is essentially content with the conclusory and quite unsubstantiated assertion that Congress is without 'any general power, express or implied,' to expatriate a citizen 'without his assent.'... Finally the Court declares that its result is bottomed upon the 'language [387 U.S. 253, 270] and the purpose of the Citizenship Clause of the Fourteenth Amendment; in explanation, the Court offers only the terms of the clause itself, the contention that any other result would be 'completely incongruous,' and the essentially arcane observation that the 'citizenry is the country and the country is the citizenry.' I can find nothing in this extraordinary

series of circumventions which permits, still less compels, the imposition of this constitutional constraint upon the authority of Congress. I must respectfully dissent.”

Harlan directly attacks Black’s crucial argument that the Congressional sponsors of the 14<sup>th</sup> Amendment intended to place the forfeiture of citizenship beyond the reach of the Congress and that only the voluntary renunciation of citizenship was acceptable under the terms of the Amendment. Harlan notes:

“There is, however, even more positive evidence that the Court’s construction of the [citizenship] clause is not that intended by its draftsmen. Between the two brief statements from Senator Howard relied upon by the Court, Howard, in response to a question, said the following:

‘I take it for granted that after a man becomes a citizen of the United States under the Constitution he cannot cease to be citizen, except by expatriation or the commission of some crime by which his citizenship shall be forfeited.’

It would be difficult to imagine a more unqualified rejection of the Court’s position; Senator Howard, the clause’s sponsor, very plainly believed that it would leave unimpaired Congress’ power to deprive unwilling citizens of their citizenship. “

Harlan also pointed out that Congress from 1864 through 1867 enacted a series of bills that explicitly stripped citizenship from American citizens (mostly former Confederates) without their “assent.” Harlan notes that President “Lincoln makes it quite plain that he was not troubled by any doubts about the constitutionality” of these measures. The Harlan dissent continues by examining the history of the involuntary expatriation of American citizens that was supported by both the legislative and executive branches of government in the later half of the 19<sup>th</sup> century; with the Expatriation Act of 1907; and in the Nationality Act of 1940.

He concludes:

“... nothing in the history, purposes, or language of the clause [Citizenship Clause of the 14<sup>th</sup> Amendment] suggests that it forbids Congress in all circumstances to withdraw the citizenship of an unwilling citizen. To the contrary, it was expected and should now be understood, to leave Congress at liberty to expatriate a citizen if the expatriation is an appropriate exercise of a power otherwise given to Congress by the Constitution, and if the methods and terms of expatriation adopted by Congress are consistent with the Constitution’s other relevant commands....it is not proper to create from the Citizenship Clause an additional, and entirely unwarranted, restriction [387 U.S. 253, 293] upon legislative authority. The construction now placed on the Citizenship Clause rests, in the last analysis, simply on the Court’s ipse dixit, evincing little more, it is quite apparent, than the present majority’s own distaste for the expatriation power.”

In 1980, the Supreme Court in *Vance v. Terrazas* reaffirmed the “assent” principle of *Afroyim*. The case involved Laurence Terrazas who was born in the US to a Mexican father and acquired both American and Mexican citizenship at birth. While studying in Mexico, Terrazas signed a document affirming allegiance to Mexico and expressly renouncing allegiance to the United States. Later, Terrazas claimed that despite his formal declaration he did not really “intend” to give up his citizenship. The Court declared that according to *Afroyim* the Congress does not have the power to take citizenship away from



a citizen unless it was the “intent” of that citizen to voluntarily forfeit his citizenship. Specifically, “intent” had to be proved separately, it could not simply be assumed by the actions of the citizen.

The Court did, however, rule that Congress was free to establish a “preponderance of evidence” standard to determine if the citizen intended to give up his citizenship. The “preponderance of evidence” is used in civil lawsuit cases and is a lower standard of proof than the “clear and convincing evidence” standard that is used in criminal trials. Four justices (Marshall, Stevens, Brennan, Stewart) dissented on the “preponderance of evidence” standard favoring the more defense-friendly “clear and convincing” evidence.

In 1986 Congress amended the section of the Immigration and Nationality Act dealing with loss of citizenship to conform to the judicial interpretation of *Affroyim*. With little discussion, the phrase, “voluntarily performing any of the following acts with the intention of relinquishing United States nationality” was added after the phrase “shall lose his nationality by,” and the list of what previously were, for the most part, automatically expatriating acts.

In 1990 the U.S. Department of State changed its long-standing policy and adopted a “clear and convincing” evidence type of approach that assumed an intention to retain citizenship, regardless of the act performed. However, at the same time, Secretary of State James Baker officially stated: “The action should not be seen as an endorsement of dual nationality. Our obligation is to ensure that the administration of our laws is equitable and consistent, regardless of the fact that dual nationality may be an incidental product of that treatment. The adoption of this administrative standard is consistent with our resolve to continue to meet our statutory obligation to determine whether loss has occurred by ascertaining the citizen’s intent.”

#### (IX) CONCLUSION: WHAT IS TO BE DONE?

This testimony has outlined the utter incompatibility of American constitutional morality with the maintenance of political allegiance by American citizens to a foreign state or power. Dual citizens exist in an “extra-Constitutional” or “post-Constitutional” political space. That is to say, dual citizens inhabit a supranational political space which is, by definition, beyond, and not bound by, the full range of responsibilities and rights inherent in the American constitutional community. The dual citizens as members of another, and foreign, political community, have different (and, in some cases, competing and conflicting) responsibilities, rights, interests and commitments. By objective practical necessity, as well as moral obligation, these other rights, responsibilities, interests, and commitments—dilute their commitment, attachment and allegiance to the United States of America.

To be sure, for some limited number of individuals, (e.g., children, one of whose parents is American and the other is not), dual citizenship, in some form, (at least temporarily) is necessary. **The question is: Do we continue to permit the rapid increase in dual citizenship, which will happen by default if no Congressional action is taken, or do we want to begin to limit dual allegiance and scale it back? Current immigration legislation will exacerbate the dual allegiance problem. For example, if the proposed McCain-Kennedy bill becomes law, 11 million eventual new citizens from Mexico, Central America, and elsewhere, will be eligible for citizenship in their birth nations as well as the United States.** Indeed, the leading academic expert on dual allegiance, CUNY Political psychologist, Stanley Renshon, has noted that today “almost 90 percent of all immigrants come from countries that allow or encourage multiple citizenship.” Never has there been such a potential challenge to the integrity of our body politic and of the Oath of Allegiance and to our entire citizenship naturalization process; and ultimately to the principle of patriotic assimilation.

The Supreme Court decision in *Afroyim v. Rusk* has tended to inhibit serious thinking about the means of restricting, regulating, and reducing dual allegiance. But, opponents of dual allegiance should not be intimidated by *Afroyim*. There is plenty that can be done to restrict dual allegiance, short of involuntarily taking citizenship away from anyone. **Even legal observers, who are strong adherents of dual citizenship and the *Afroyim* decision, do not dispute the authority of Congress to regulate all forms of multiple allegiance.**

Significantly, while Chief Justice Earl Warren's dissent in *Perez* became the intellectual foundation for *Afroyim*, Warren himself recognized the plenary powers of Congress in this area. After stating that under the 14<sup>th</sup> amendment the government did not have the power to "take citizenship away," **Chief Justice Warren, in the very next sentence, declared: "If the Government determines that certain conduct by United States citizens should be prohibited because of injurious consequences to the conduct of foreign affairs or to some other legitimate governmental interest, it may within the limits of the Constitution to proscribe such activity and assess appropriate punishment."** In other words, **even Earl Warren said that Congress could prohibit the types of acts (voting in a foreign election etc.) examined in *Perez* and later in *Afroyim*.**

Clearly, within the boundaries of current Supreme Court interpretation, many acts that were formerly expatriating (such as voting in a foreign election, serving in a high office in a foreign government, etc.) could be made felonies, punishable by fines and imprisonment. Exceptions for serving the "national security interests of the United States" could be stipulated. The purpose of such legislation is to affirm our nation's deepest normative principles. It is not to punish people (who might be well meaning and merely following current custom). The legislation would, obviously not be retroactive, but simply inform citizens that from now on: "These are the new rules." This message will get out and there should be very few, if any prosecutions.

**The principle that an American citizen should be loyal to the United States and to no other country or political power is a moral and constitutional issue of the highest order for our country.** The purpose of such legislation would be for the Congress (speaking for "we the people") to affirm and codify this vital American principle. Moreover, the purpose of such legislation would be to reaffirm the integrity of the Oath of Renunciation and Allegiance and, therefore, the true significance of patriotic assimilation, which is the transfer of political loyalty from the "old country" to the United States of America. Are we a "nation of assimilated immigrants" or are we nation, whose citizens have divided political loyalties? Let's make this clear, particularly for our newest fellow citizens. Let us establish clear rules and help them assimilate (in popular parlance this would be "tough love") as we patriotically assimilated immigrants in the past.

**The Founding Fathers believed (1795) that it was necessary for new citizens to renounce all previous political allegiance. The Administration of Franklin D Roosevelt believed that "taking an active part in the political affairs of a foreign state...involve a political attachment and practical allegiance" to that foreign state, "inconsistent with continued allegiance to the United States." The great New Deal lawyer and Supreme Court Justice Felix Frankfurter believed that voting in a foreign election, serving in a foreign government and the like, revealed "not only, something less than complete and unswerving allegiance to the United States, but also elements of an allegiance to another country in some measure, at least inconsistent with American citizenship."**

The Founders, FDR, and Justice Felix Frankfurter were all correct to vigorously affirm that nothing less than undivided political loyalty to the United States of America was an absolute condition for

citizenship in our democracy. Today, former Speaker of the House of Representatives, Newt Gingrich echoes these views.

Gingrich writes in his new book, *Winning the Future* (2005):

**“One of the most insidious assaults on American exceptionalism has been the rise of dual citizenship in which people no longer have to renounce allegiance to any other government in order to become Americans. This is a clear break with the Founding Fathers and the essence of American uniqueness. It is part of an ongoing assault on citizenship”**

**Gingrich ends this section of his book by endorsing the idea that violating the Oath of Renunciation and Allegiance should be a “matter of prosecutable federal law.”** We agree, and suggest that the enforcement of the Oath of Allegiance should be part of any “immigration enforcement” legislation being considered by the Congress.

The following are a series of possible legislative actions that could be taken by the Congress that would regulate multiple citizenships, dual citizenship, dual nationality, and dual allegiance in all forms, and would be within the constitutional requirements of recent Supreme Court decisions. **Again, the purpose of such legislation is not punitive, it is not to punish naturalized citizens or native-born citizens who have in good faith voted in foreign elections or served in foreign governments and so on. The purpose is to affirm in law—principles and norms—that are consistent with our constitutional heritage and our proud tradition of patriotically assimilating immigrants into the American way of life.**

#### **Legislative Suggestions:**

A section of any bill on immigration reform; or any amendment to the Immigration and Nationality Act; or a free standing bill or amendment which would be a Sense of the Congress declaration that dual citizenship, dual nationality, and multiple allegiances are to be rejected in principle and that their application should be restricted and narrowed in practice.

The section, amendment, or freestanding bill could state:

**“It is the sense of the Congress that it is a compelling national interest of the United States to reject dual citizenship, dual nationality, and all forms of multiple allegiance arrangements in principle, and to restrict and narrow their application in practice. The agencies of the executive branch, all regulatory agencies, and of the judiciary of the United States at all levels shall be guided by this Congressional intent when addressing issues of dual citizenship, dual nationality, and multiple allegiances of all kinds.”**

#### **Language to enforce the Oath of Renunciation and Allegiance**

**Part 1. Sanctions for Acts Violating the Oath of Renunciation and Allegiance.** The following acts performed by naturalized citizens are deemed violations of the Oath of Renunciation and Allegiance that was taken voluntarily by the new citizens. The following acts are subject to sanctions of a \$10,000 fine and one year in jail for each act.

Voting in an election of the foreign state in which the persons were previously a subject or citizen;

Running for elective office of the foreign state in which the persons were previously a subject or citizen;

Serving in any government body (executive, legislative, or judicial, national, provincial, or local) of the foreign state in which the persons were previously a subject or citizen;

Using the passport of the foreign state in which the persons were previously a subject or citizen;

Taking an oath of allegiance to the foreign state in which the persons were previously a subject or citizen;

Serving in the armed forces of the foreign state in which the persons were previously a subject or citizen.

In exceptional cases naturalized citizens can obtain a waiver and exemption from sanctions if any of the acts are deemed to be in the "national interests of the United States." Waivers are granted in advance on a case-by-case basis by the State Department in all of the above acts, except for the serving in the armed forces of the foreign state, in which case the exemption would be granted by the Defense Department.

**Part 2. Responsibility of the Department of Homeland Security, Citizenship and Immigration Services to inform applicants for citizenship that the United States takes the Oath of Renunciation and Allegiance seriously and that it will be enforced.** The Department of Homeland Security is directed to inform applicants for US Citizenship of the enforcement provisions of the Oath of Renunciation and Allegiance. The Department of Homeland Security is directed to incorporate knowledge and understanding of these enforcement provisions into the history and government test that applicants for citizenship take.

**Part 3. Responsibility of the Department of State to articulate the position that the United States finds dual/multiple citizenship and nationality problematic and the presumption will be that its use should be restricted and limited as much as possible.** The State Department is directed to revise its 1990 memoranda and directives on dual citizenship and dual nationality and return to the traditional State Department policy of viewing dual/multiple citizenship as problematic, as something to be discouraged not encouraged.

**Part 4. Informing birth nations of their previous citizens' new status as American citizens.** After naturalization ceremonies, the consulates and/or embassies of the immigrant sending foreign states are to be given a list of naturalized American citizens who are no longer subject to their jurisdiction. The State Department working in cooperation with the Department of Homeland Security will inform foreign embassies and consulates that their former subjects and citizens who have taken an oath of allegiance to the United States and renounced all previous allegiance are now exclusively American citizens and no longer subject to the jurisdiction of their birth nations. The State Department is directed to inform the foreign embassies and consulates that the United States rejects the doctrine of "perpetual allegiance."

Mr. HOSTETTLER. Dr. Eastman.

**TESTIMONY OF DR. JOHN C. EASTMAN, PROFESSOR,  
CHAPMAN UNIVERSITY SCHOOL OF LAW**

Mr. EASTMAN. Chairman Hostettler, thank you for having me, and good to see you again.

Before I begin my formal remarks, I can't let go unchallenged the incorrect statement by Representative Jackson Lee about the founders and their understanding of citizenship. African Americans in a number of States were recognized as citizens; and the notion that the "three-fifths" clause treats African Americans as less than whole when its purpose was to deny additional representation to slave owners, I think needs to be challenged every time that canard is made and, hopefully, we'll get beyond that.

I come here to talk about this important issue, and I commend you for taking it up. In light of the Supreme Court's Hamdi case, I think now is a perfect opportunity to revisit a 100-year-old error by the Supreme Court.

Hamdi was born in Louisiana, as you pointed out in your opening remarks, to Saudi parents. This misunderstanding of the citizenship clause then allowed us or required us to treat him as a citizen. He was eventually captured, engaged in armed conflict against the forces of the United States because he never had any allegiance to the United States as we expect of our citizens. And this is an opportunity to revisit that.

The Constitution's text actually has two components. It says "birth on United States soil" and "subject to the jurisdiction thereof." The "subject of the jurisdiction" clause, as I elaborate at greater length in my written testimony, means complete allegiance owing, subject to prosecution for treason-type jurisdiction, not the mere territorial jurisdiction that anybody coming here visiting as a tourist is subject to if they exceed our speed limits on our highways.

I think it's important to understand that Yaser Hamdi never had that more complete jurisdiction and therefore was not a citizen as required by the Constitution's text. Textually, the birth-is-enough view renders the second clause of the Constitution's citizenship clause entirely redundant. Historically, the language of the 1866 Civil Rights Act, which the 14th amendment was intended to constitutionalize, makes very clear that all persons born in the United States and not subject to any foreign power are declared to be citizens of the United States.

The authors in the legislative history, the authors of that language, Senator Lyman Trumbull said, "When we talk about 'subject to the jurisdiction of the United States,' it means complete jurisdiction, not owing allegiance to anybody else." Senator Jacob Howard said that it's "a full and complete jurisdiction."

The interpretative gloss given by Senators Trumbull and Howard, adopted by Congress, understood by those that ratified the 14th amendment, was accepted by the Supreme Court in its first two cases addressing the citizenship clause. In the *Slaughter-House* cases, both the majority and the dissenting justices in that case recognized it meant this more complete allegiance-owing jurisdiction.

That was only dicta in *Slaughter-House*, but in the 1884 case of *Elk v. Wilkins* the Supreme Court held that a claimant was not subject to the jurisdiction of the United States at birth if he was merely subject in some respect or degree, but completely subject to the political jurisdiction and owing it direct and immediate allegiance.

Now, in 1898, the Supreme Court reversed course. And I can understand the sentiments of the Court for doing so. In the case of *Wong Kim Ark*, the Supreme Court dealt with a child of a Chinese immigrant who was here legally, permanently, but subject to a treaty that we had entered into with the emperor of China that would never recognize the ability of anyone to renounce their prior citizenship. However the sympathy there falls, we should not read that *Wong Kim Ark* case so broadly as to insist upon the Constitution setting a minimum threshold for conferring citizenship on anyone who happens to be born here, whether here permanently or temporarily, whether here legally or illegally, or the worst case scenario, whether here with a design to cause harm to the United States, to engage in armed conflict against United States.

The *Hamdi* case, I think, makes very clear that the prospect of potential terrorists coming across our border and giving birth to children once they're here in order to specifically open up a Fifth Column on our shores is a very real possibility.

Now, you might want to defer to the Supreme Court's decision and say, Congress can't do anything about it. There are a couple of reasons, that I'll close with, where I think that's not the case here.

First, I think the decision is just simply wrong in its broader application, and it was therefore dicta only in its broader application not dealing with particulars of that case.

But second, the Supreme Court itself has regularly recognized that this body has plenary power over naturalization policy. You don't have power to go below the floor that the Constitution sets, but we should not be broadly interpreting what the Constitution mandates in order to restrict the plenary power of this body of Congress to define and determine naturalization for this country.

Again, *Hamdi's* case makes this powerful for us on the urgency of taking this up now. The notion that we can have dual allegiance, that we can expect some of our citizens to actually take up arms for countries that might one day be engaged in war against us means that now is the time to revisit this, to get the constitutional minimum set correctly and leave anything else beyond that to the policy judgment of Congress.

Thank you, Chairman.

Mr. HOSTETTLER. Thank you, Dr. Eastman.

[The prepared statement of Dr. Eastman follows:]

## PREPARED STATEMENT OF JOHN C. EASTMAN

Born in the U.S.A.? Rethinking Birthright Citizenship in the Wake of 9/11

By John C. Eastman<sup>1</sup>

Good afternoon, Chairman Hostettler and members of the Committee. I am delighted to be with you today as you begin what I consider to be an extremely important inquiry with profound consequences for our very notion of citizenship and sovereignty. My remarks will focus on a recent case decided by the Supreme Court in 2004, which has presented us all with an important opportunity to reconsider—and correct—a century-old misinterpretation of the Constitution’s Citizenship Clause that has already eroded the bilateral consent foundation of citizenship, before that erosion of our national sovereignty becomes irreversible.

**I. Introduction**

At 4:05 p.m. on the afternoon of September 26, 1980—day 327 of the Iranian hostage crisis—Nadiyah Hussen Hamdi, born Nadia Hussen Fattah in Taif, Saudi Arabia, gave birth to a son, Yaser Esam Hamdi, at the Women’s Hospital in Baton Rouge, Louisiana. I mention the Iranian hostage crisis because Yaser Hamdi might just as easily have been the son of parents of Iran, then in a hostile stand-off with the United States, as of Saudi Arabia. The boy’s father, Esam Fouad Hamdi, a native of Mecca, Saudi Arabia and still a Saudi citizen, was residing at the time in Baton Rouge on a temporary visa to work as a chemical engineer on a project for Exxon.<sup>2</sup> While the boy was still a toddler, the Hamdi

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<sup>1</sup> Professor of Law, Chapman University School of Law and Director, The Claremont Institute Center for Constitutional Jurisprudence. Ph.D., The Claremont Graduate School; J.D., The University of Chicago Law School. The author participated as *amicus curiae* in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004). The superb research assistance of Chapman law student Karen Lugo is gratefully acknowledged. This testimony is drawn from a paper initially presented at Chapman University School of Law in March 2003 at The Claremont Institute’s Symposium on American Citizenship in the Age of Multicultural Immigration, and from the brief filed on behalf of The Claremont Institute’s Center for Constitutional Jurisprudence in the *Hamdi* case.

<sup>2</sup> Certificate of Live Birth, Birth No. 117-1980-058-00393, on file in the Vital Records Registry of the State of Louisiana and available on-line at <http://news.findlaw.com/cnn/docs/terrorism/hamdi92680birthc.pdf> (last visited March 20, 2003); Frances Stead Sellers, *A Citizen on Paper Has No Weight*, Wash. Post B1 (Jan. 19, 2003).

family returned to its native Saudi Arabia, and for the next twenty years Yaser Esam Hamdi would not set foot again on American soil.<sup>3</sup>

Yaser Hamdi's path after coming of age would instead take him to the hills of Afghanistan, to take up with the Taliban (and perhaps the al Qaeda terrorist organization it harbored) in its war against the forces of the Northern Alliance and, ultimately, against the armed forces of the United States as well.<sup>4</sup> In late 2001, during a battle near Konduz, Afghanistan between Northern Alliance forces and the Taliban unit in which Hamdi was serving and while armed with a Kalashnikov AK-47 military assault rifle, Hamdi surrendered to the Northern Alliance forces and was taken by them to a military prison in Mazar-e-Sharif, Afghanistan.<sup>5</sup> From there Hamdi was transferred to Sheberghan, Afghanistan, where he was interrogated by a U.S. interrogation team, determined to be an enemy combatant, and eventually transferred to U.S. control, first in Kandahar, Afghanistan and then at the U.S. Naval Base in Guantanamo Bay, Cuba.<sup>6</sup>

Unlike his fellow enemy combatants being detained in Guantanamo Bay, Hamdi had a get-out-of-Cuba-free card. When U.S. officials learned that Hamdi had been born in Louisiana, they transferred Hamdi (free of charge!) to the Naval Brig in Norfolk, Virginia,<sup>7</sup> from where Hamdi, under the auspices of his father acting as his next-friend, has waged a legal battle seeking access to attorneys and a writ of habeas corpus compelling his release. This, because under the generally-accepted interpretation of the Fourteenth Amendment's citizenship clause, Hamdi's birth to Saudi parents who were temporarily visiting one of the United States at the time of his birth made him a U.S. citizen, entitled to the full panoply of rights that the U.S. Constitution guarantees to U.S. citizens.

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<sup>3</sup> Sellers, *supra* n. 2, at B1.

<sup>4</sup> The armed forces of the United States had been ordered to Afghanistan by President Bush, acting pursuant to his powers as Commander in Chief, U.S. Const. Art. II, and an explicit Congressional Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001), against the "nations, organizations, or persons [the President] determines planned, authorized, committed or aided the terrorist attacks [against the United States on September 11, 2001] or harbored such organizations or persons."

<sup>5</sup> Brief of the United States, *Hamdi v. Rumsfeld*, at 3, 6.

<sup>6</sup> *Id.* at 6-7.

<sup>7</sup> *Id.*



Hamdi petitioned the federal district court in Virginia for a writ of habeas corpus, seeking to challenge his detention. His case was ultimately heard by the Supreme Court of the United States, which held, in an opinion by Justice O'Connor, that Hamdi had a Due Process right to challenge the factual basis for his classification and detention as an enemy combatant.<sup>8</sup> In dissent, Justice Scalia, joined by Justice Stevens, declined to accept that Hamdi was actually a citizen, referring to him instead as a "presumed American citizen" at the outset of the opinion.<sup>9</sup>

Justice Scalia's significant, albeit brief and somewhat oblique, challenge to the received wisdom of the meaning of the Fourteenth Amendment's Citizenship Clause warrants our attention. As I argued in the brief I filed on behalf of The Claremont Institute Center for Constitutional Jurisprudence in the case, the received wisdom regarding the Citizenship Clause is incorrect, as a matter of text, historical practice, and political theory. As an original matter, mere birth on U.S. soil alone was insufficient to confer citizenship as a matter of constitutional right. Rather, birth, together with being a person subject to the complete and exclusive jurisdiction of the United States (i.e., *not* owing allegiance to another sovereign) was the constitutional mandate, a floor for citizenship below which Congress cannot go in the exercise of its Article I power over naturalization. While Congress remains free to offer citizenship to persons who have no constitutional entitlement to citizenship, it has not done so. Mere birth to foreign nationals who happen to be visiting the United States at the time, as with the case of Hamdi the Taliban, should not result in citizenship. Because court rulings to the contrary have rested on a flawed understanding of the Citizenship Clause, those rulings should be revisited or at least narrowly interpreted. Moreover, the statutory grant of citizenship conferred by Congress, which precisely tracks the language of the Fourteenth Amendment, should itself be re-interpreted in accord with the original understanding of the Citizenship Clause. In the wake of 9/11, now would be a good time to do so.

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<sup>8</sup> *Hamdi v. Rumsfeld*, 542 U.S. 507, 124 S.Ct. 2633, 2635 (2004).

<sup>9</sup> *Id.*, 124 S.Ct., at 2660.

## II. The Citizenship Clause of the Fourteenth Amendment

To counteract the Supreme Court's decision in *Dred Scott v. Sandford*<sup>10</sup> denying citizenship not just to Dred Scott, a slave, but to all African-Americans, whether slave or free, the Congress proposed and the states ratified the Citizenship Clause of the Fourteenth Amendment, which specifies: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."<sup>11</sup> It is today routinely believed that, under the Clause, mere birth on U.S. soil is sufficient to confer U.S. citizenship. Legal commentator Michael Dorf, for example, noted recently: "Yaser Esam Hamdi was born in Louisiana. Under Section One of the Fourteenth Amendment, he is *therefore* a citizen of the United States, even though he spent most of his life outside this country."<sup>12</sup> What Dorf's formulation omits, of course, is the other component of the Citizenship Clause. One must also be "subject to the jurisdiction" of the United States in order constitutionally to be entitled to citizenship.

To the modern ear, Dorf's formulation nevertheless appears perfectly sensible. Any person entering the territory of the United States—even for a short visit; even illegally—is considered to have subjected himself to the jurisdiction of the United States, which is to say, subjected himself to the laws of the United States. Indeed, former Attorney General William Barr has even contended that one who has never entered the territory of the United States subjects himself to its jurisdiction and laws by taking actions that have an effect in the United States.<sup>13</sup> Surely one who is actually born in the United States is therefore "subject to the jurisdiction" of the United States, and entitled to full citizenship as a result.

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<sup>10</sup> 60 U.S. 393 (1857).

<sup>11</sup> U.S. Const. Amend. XIV, § 1.

<sup>12</sup> Michael C. Dorf, *Who Decides Whether Yaser Hamdi, Or Any Other Citizen, Is An Enemy Combatant?* FindLaw (Aug. 21, 2002) (emphasis added).

<sup>13</sup> See, e.g., The Legality as a Matter of Domestic Law of Extraterritorial Law Enforcement Activities that Depart from International law: Hearings before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 101st Cong., 1st Sess. 3 (1989) (statement of William Barr, U.S. Assistant Attorney General); William J. Tuttle, *The Return of Timberlane? The Fifth Circuit Signals a Return to Restrictive Notions of Extraterritorial Antitrust*, 36 Vanderbilt J. Transnat'l L. 319, 348 (Jan. 2003) (noting that in April 1992 then-Attorney General William Barr revised Department of Justice antitrust enforcement guidelines to permit lawsuits against foreign corporations who acted exclusively outside the

However strong this interpretation is as a matter of contemporary common parlance, is simply does not comport with either the text or the history surrounding adoption of the Citizenship Clause, nor with the political theory underlying the Clause. Textually, such an interpretation would render the entire “subject to the jurisdiction” clause redundant—anyone who is “born” in the United States is, under this interpretation, necessarily “subject to the jurisdiction” of the United States—and it is a well-established doctrine of legal interpretation that legal texts, including the Constitution, are not to be interpreted to create redundancy unless any other interpretation would lead to absurd results.<sup>14</sup>

Historically, the language of the 1866 Civil Rights Act, from which the Citizenship Clause of the Fourteenth Amendment (like the rest of Section 1 of the Fourteenth Amendment) was derived so as to provide a more certain constitutional foundation for the 1866 Act, strongly suggests that Congress did *not* intend to provide for such a broad and absolute birthright citizenship. The 1866 Act provides: “All persons born in the United States, *and not subject to any foreign power*, excluding Indians not taxed, are hereby declared to be citizens of the United States.”<sup>15</sup> As this formulation makes clear, any child born on U.S. soil to parents who were temporary visitors to this country and who, as a result of the foreign citizenship of the child’s parents, remained a citizen or subject of the parents’ home country, was not entitled to claim the birthright citizenship provided in the 1866 Act.

Of course, the jurisdiction clause of the Fourteenth Amendment is somewhat different from the jurisdiction clause of the 1866 Act. The positively-phrased “subject to the jurisdiction” of the United States might easily have been intended to describe a broader grant of citizenship than the negatively-phrased language from the 1866 Act, one more in line with the contemporary understanding accepted unquestioningly by Dorf that birth on U.S. soil is alone sufficient for citizenship. But the relatively

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United States if their operations were detrimental to U.S. exporters); *see also United States v. Noriega*, 117 F.3d 1206 (11th Cir. 1997).

<sup>14</sup> *See, e.g.,* Posner, *Legal Formalism, Legal Realism, and the Interpretation of Statutes and the Constitution*, 37 Case, W. Res. L. Rev. 179 ?? (1989); *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 562 (1995) (“this Court will avoid a reading which renders some words altogether redundant”).

<sup>15</sup> Chapter 31, 14 Stat. 27 (April 9, 1866).

sparse debate we have regarding this provision of the Fourteenth Amendment does not support such a reading. When pressed about whether Indians living on reservations would be covered by the clause since they were “most clearly subject to our jurisdiction, both civil and military,” for example, Senator Lyman Trumbull, a key figure in the drafting and adoption of the Fourteenth Amendment, responded that “subject to the jurisdiction” of the United States meant subject to its “complete” jurisdiction; “[n]ot owing allegiance to anybody else.” And Senator Jacob Howard, who introduced the language of the jurisdiction clause on the floor of the Senate, contended that it should be construed to mean “a full and complete jurisdiction,” “the same jurisdiction in extent and quality as applies to every citizen of the United States now” (i.e., under the 1866 Act). That meant that the children of Indians who still “belong[ed] to a tribal relation” and hence owed allegiance to another sovereign (however dependent the sovereign was) would not qualify for citizenship under the clause. Because of this interpretative gloss, provided by the authors of the provision, an amendment offered by Senator James Doolittle of Wisconsin to explicitly exclude “Indians not taxed,” as the 1866 Act had done, was rejected as redundant.<sup>16</sup>

The interpretative gloss offered by Senators Trumbull and Howard was also accepted by the Supreme Court—by both the majority and the dissenting justices—in *The Slaughter-House Cases*. The majority correctly noted that the “main purpose” of the Clause “was to establish the citizenship of the negro,” and that “[t]he phrase, ‘subject to its jurisdiction’ was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign States born within the United States.”<sup>17</sup> Justice Steven Field, joined by Chief Justice Chase and Justices Swayne and Bradley in dissent from the principal holding of the case, likewise acknowledged that the Clause was designed to remove any doubts about the constitutionality of the 1866 Civil Rights Act, which provided that all persons born in the

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<sup>16</sup> Congressional Globe, 39th Cong., 1st Sess., 2892-97 (May 30, 1866). For a more thorough discussion of the debate, see Peter H. Schuck and Rogers M. Smith, *Citizenship Without Consent: Illegal Aliens in the American Polity* 72-89 (Yale Univ. Press 1985).

<sup>17</sup> 83 U.S. (16 Wall.) 36, 73 (1872).

United States were as a result citizens both of the United States and the state in which they resided, provided they were not at the time subjects of any foreign power.<sup>18</sup>

Although the statement by the majority in *Slaughter-House* was *dicta*, the position regarding the “subject to the jurisdiction” language advanced there was subsequently adopted by the Supreme Court in the 1884 case addressing a claim of Indian citizenship, *Elk v. Wilkins*.<sup>19</sup> The Supreme Court in that case rejected the claim by an Indian who had been born on a reservation and subsequently moved to non-reservation U.S. territory, renouncing his former tribal allegiance. The Court held that the claimant was not “subject to the jurisdiction” of the United States at birth, which required that he be “not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their political jurisdiction, and owing them direct and immediate allegiance.”<sup>20</sup> John Elk did not meet the jurisdictional test because, as a member of an Indian tribe at his birth, he “owed immediate allegiance to” his tribe and not to the United States. Although “Indian tribes, being within the territorial limits of the United States, were not, strictly speaking, foreign states,” “they were alien nations, distinct political communities,” according to the Court.<sup>21</sup> Drawing explicitly on the language of the 1866 Civil Rights Act, the Court continued:

Indians born within the territorial limits of the United States, members of, and owing immediate allegiance to, one of the Indian tribes, (an alien though dependent power,) although in a geographical sense born in the United States, are no more “born in the United States and subject to the jurisdiction thereof,” within the meaning of the first section of the fourteenth amendment, than the children of subjects of any foreign government born within the domain of that government, or the children born within the United States, of ambassadors or other public ministers of foreign nations.<sup>22</sup>

Indeed, if anything, Indians, as members of tribes that were themselves dependent to the United States (and hence themselves subject to its jurisdiction), had a stronger claim to citizenship under the

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<sup>18</sup> *Id.* at 92-93.

<sup>19</sup> 112 U.S. 94 (1884).

<sup>20</sup> *Id.* at 102.

<sup>21</sup> *Id.* at 99.

<sup>22</sup> *Id.* at 102.

Fourteenth Amendment merely by virtue of their birth within the territorial jurisdiction of the United States than did children of foreign nationals. But the Court in *Elk* rejected that claim, and in the process necessarily rejected the claim that the phrase, “subject to the jurisdiction” of the United States, meant merely territorial jurisdiction as opposed to complete, political jurisdiction.

Such was the interpretation of the Citizenship Clause initially given by the Supreme Court. As Thomas Cooley noted in his treatise, The General Principles of Constitutional Law in America, “subject to the jurisdiction” of the United States “meant full and complete jurisdiction to which citizens are generally subject, and not any qualified and partial jurisdiction, such as may consist with allegiance to some other government.”

### III. The Supreme Court’s 1898 Misreading of the Citizenship Clause

The clear (and as I contend, correct) holding of *Elk v. Wilkins*, and the equally correct *dicta* from *Slaughter-House*, was rejected by the Supreme Court in 1898, thirty years after the adoption of the Fourteenth Amendment, in the case of *United States v. Won Kim Ark*,<sup>23</sup> decided by the same court, with nearly the same line-up, that had given its sanction to the ignominious separate-but-equal doctrine less than two years earlier in *Plessy v. Ferguson*.<sup>24</sup>

In *Won Kim Ark*, the Supreme Court held that “a child born in the United States, of parents of Chinese descent, who at the time of his birth were subjects of the emperor of China, but have a permanent domicile and residence in the United States,” was, merely by virtue of his birth in the United States, a citizen of the United States as a result of the Citizenship Clause of the Fourteenth Amendment. Justice Horace Gray, writing for the Court, correctly noted that the language to the contrary in *The Slaughter-House Cases* was merely *dicta* and therefore not binding precedent.<sup>25</sup> He found the *Slaughter-House* *dicta* unpersuasive because of a subsequent decision, in which the author of the majority opinion in *Slaughter-House* had concurred, holding that foreign consuls (unlike ambassadors)

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<sup>23</sup> 169 U.S. 649 (1898).

<sup>24</sup> 163 U.S. 537 (1896).

<sup>25</sup> 169 U.S. at 678.

were “subject to the jurisdiction, civil and criminal, of the courts of the country in which they reside.”<sup>26</sup> Justice Gray appears not to have appreciated the distinction between partial, territorial jurisdiction, which subjects all who are present within the territory of a sovereign to the jurisdiction of its laws, and complete, political jurisdiction, which requires as well allegiance to the sovereign.

More troubling than his rejection of the persuasive dicta from *Slaughter-House* was the fact that Justice Gray also repudiated the actual holding in *Elk v. Wilkins*, which he himself had authored. After quoting extensively from the opinion, including the portion, reprinted above, noting that the children of Indians owing allegiance to an Indian tribe were no more “subject to the jurisdiction” of the United States within the meaning of the Fourteenth Amendment than were the children of ambassadors and other public ministers of foreign nations born in the United States, Justice Gray simply held, without any analysis, that *Elk* “concerned only members of the Indian tribes within the United States, and had no tendency to deny citizenship to children born in the United States of foreign parents of Caucasian, African, or Mongolian descent, not in the diplomatic service of a foreign country.”<sup>27</sup>

By limiting the “subject to the jurisdiction” clause to the children of diplomats, who neither owed allegiance to the United States nor were (at least at the ambassadorial level) subject to its laws merely by virtue of their residence in the United States as the result of the long-established international law fiction of extraterritoriality by which the sovereignty of a diplomat is said to follow him wherever he goes, Justice Gray simply failed to appreciate what he seemed to have understood in *Elk*, namely, that there is a difference between territorial jurisdiction and the more complete, allegiance-obliging jurisdiction that the Fourteenth Amendment codified.

Justice Gray’s failure even to address, much less appreciate, the distinction between territorial jurisdiction and complete, political jurisdiction was taken to task by Justice Fuller, joined by Justice Harlan, in dissent. Drawing on an impressive array of legal scholars, from Vattel to Blackstone, Justice

<sup>26</sup> *Id.* at 679 (citing, e.g., 1 Kent, Comm. 44; *In re Baiz*, 135 U.S. 403, 424 (1890)).

<sup>27</sup> *Id.* at 681-82.

Fuller correctly noted that there was a distinction between two sorts of allegiance—“the one, natural and perpetual; the other, local and temporary.” The Citizenship Clause of the Fourteenth Amendment referred only to the former, he contended. He contended that the absolute birthright citizenship urged by Justice Gray was really a lingering vestige of a feudalism that the Americans had rejected, implicitly at the time of the Revolution, and explicitly with the 1866 Civil Rights Act and the Fourteenth Amendment.

Quite apart from the fact that Justice Fuller’s dissent was logically compelled by the text and history of the Citizenship Clause, Justice Gray’s broad interpretation led him to make some astoundingly incorrect assertions. He claimed, for example, that “a stranger born, for so long as he continues within the dominions of a foreign government, owes obedience to the laws of that government, *and may be punished for treason.*”<sup>28</sup> And he necessarily had to recognize dual citizenship as a necessary implication of his position,<sup>29</sup> despite the fact that, ever since the Naturalization Act of 1795, “applicants for naturalization were required to take, not simply an oath to support the constitution of the United States, but of absolute renunciation and abjuration of all allegiance and fidelity to every foreign prince or state, and particularly to the prince or state of which they were before the citizens or subjects.”<sup>30</sup> That requirement still exists though it no longer seems to be taken seriously. Hopefully this Committee will, as a result of these hearings, begin to address that fundamental contradiction in our naturalization practice.

Finally, Justice Gray’s position is simply at odds with the notion of consent that underlay the sovereign’s power over naturalization. What it meant, fundamentally, was that foreign nationals could secure American citizenship for their children unilaterally, merely by giving birth on American soil, whether or not their arrival on America’s shores was legal or illegal, temporary or permanent.

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<sup>28</sup> *Id.* at 693.

<sup>29</sup> *Id.* at 691.

<sup>30</sup> *Id.* at 711 (Fuller, J., dissenting) (citing Act of Jan. 29, 1795, 1 Stat. 414, c. 20)



Justice Gray held that the children of two classes of foreigners were not entitled to the birthright citizenship he thought guaranteed by the Fourteenth Amendment. First, as noted above, were the children of ambassadors and other foreign diplomats who, as the result of the fiction of extraterritoriality, were not even considered subject to the territorial jurisdiction of the United States. Second were the children of invading armies born on U.S. soil while it was occupied by the foreign army. But apart from that, all children of foreign nationals who managed to be born on U.S. soil were, in his formulation, citizens of the United States. Children born of parents who had been offered permanent residence but were not yet citizens and who as a result had not yet renounced their allegiance to their prior sovereign would become citizens by birth on U.S. soil. This was true even if, as was the case in *Wong Kim Ark* itself, the parents were, by treaty, unable ever to become citizens.

Children of parents residing only temporarily in the United States on a work or student visa, such as Yaser Hamdi's parents, would also become U.S. citizens. Children of parents who had overstayed their temporary visa would also become U.S. citizens, even though born of parents who were now here illegally. And, perhaps most troubling from the "consent" rationale, children of parents who never were in the United States legally would also become citizens as the direct result of the illegal action by their parents. Finally, to return to my opening reference to the Iranian hostage crisis, this would be true even if the parents were nationals of a regime at war with the United States and even if the parents were here to commit acts of sabotage against the United States, at least as long as the sabotage did not actually involve occupying a portion of the territory of the United States. The notion that the framers of the Fourteenth Amendment, when seeking to guarantee the right of citizenship to the former slaves, also sought to guarantee citizenship to the children of enemies of the United States who were in our territory illegally, is simply too absurd to be a credible interpretation of the Citizenship Clause.

#### **IV. Reviving Congress's Constitutional Power Over Naturalization**

This is not to say that Congress could not, pursuant to its naturalization power, choose to grant citizenship to the children of foreign nationals. But thus far it has not done so. Instead, the language of

the current naturalization statute simply tracks the minimum constitutional guarantee—anyone born in the United States, *and subject to its jurisdiction*, is a citizen. With the absurdity of Hamdi’s claim of citizenship so recently and vividly before us, it is time for the courts, and for the political branches as well, to revisit Justice Gray’s erroneous interpretation of that language, restoring to the constitutional mandate what its drafters actually intended, that only a complete jurisdiction, of the kind that brings with it a total and exclusive allegiance, is sufficient to qualify for the grant of citizenship to which the people of the United States actually consented.

Of course, Congress has in analogous contexts been hesitant to exercise its own constitutional authority to interpret the Constitution in ways contrary to the pronouncements of the Courts. Even if that course is warranted in most situations so as to avoid a constitutional conflict with a co-equal branch of the government, it is not warranted here for at least two reasons. First, as the Supreme Court itself has repeatedly acknowledged, Congress’s power over naturalization is “plenary,” while “judicial power over immigration and naturalization is extremely limited.”<sup>31</sup> While that recognition of plenary power does not permit Congress to dip below the constitutional floor, of course, it does counsel against any judicial interpretation that provides a broader grant of citizenship than is actually supported by the Constitution’s text.

Second, the gloss that has been placed on the *Wong Kim Ark* decision is actually much broader than the actual holding of the case. This Committee should therefore recommend, and Congress should then adopt, a narrow reading of the decision that does not intrude on the plenary power of Congress in this area any more than the actual holding of the case requires. Wong Kim Ark’s parents were actually in this country both legally and permanently, yet were barred from even pursuing citizenship (and renouncing their former allegiance) by a treaty that closed that door to all Chinese immigrants. They were therefore as fully subject to the jurisdiction of the United States as they were legally permitted to

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<sup>31</sup> See, e.g., *Miller v. Albright*, 523 U.S. 420, 455 (1998); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Kleindienst v. Mandel*, 408 U.S. 753, 769-770 (1972); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

be, and under those circumstances, it is not a surprise that the Court would extend the Constitution's grant of birthright citizenship to their children. But the effort to read *Wong Kim Ark* more broadly than that, as interpreting the Citizenship Clause to confer birthright citizenship on the children of those *not* subject to the full and sovereign (as opposed to territorial) jurisdiction of the United States, not only ignores the text, history, and theory of the Citizenship Clause, but it permits the Court to intrude upon a plenary power assigned to Congress itself. Yaser Hamdi's case has highlighted for us all the dangers of recognizing unilateral claims of birthright citizenship by the children of people only temporarily visiting this country, and highlighted even more the dangers of recognizing such claims by the children of those who have arrived illegally to do us harm. It is time for Congress to reassert its plenary authority here, and make clear, by resolution, its view that the "subject to the jurisdiction" phrase of the Citizenship Clause has meaning of fundamental importance to the naturalization policy of the nation. I applaud this Committee's efforts in beginning the process to address this problem, and I look forward to working with you and the Committee's staff to help craft the appropriate constitutional solution.

Mr. HOSTETTLER. Mr. Spiro.

**TESTIMONY OF PETER SPIRO, ASSOCIATE DEAN FOR FACULTY DEVELOPMENT AND DEAN AND VIRGINIA RUSK PROFESSOR OF INTERNATIONAL LAW, UNIVERSITY OF GEORGIA SCHOOL OF LAW**

Mr. SPIRO. Thank you, Mr. Chairman. Thank you for giving me the opportunity to testify on the subject of dual citizenship.

Dual citizenship is, in my view, a phenomenon of considerable importance. The dramatic increase in the incidence of dual citizenship is evidence of the changing orientation of individuals in a transformed global order.

Although I believe dual citizenship to be a matter of great importance, I do not believe that it is the appropriate target of legislative action. Dual citizenship is an almost entirely benign phenomenon. Dual citizenship poses benefits not only to individual Americans; in my opinion, dual citizenship affirmatively serves the natural interest as well.

I would like to make three brief points in my opening statement before the Committee. First, it is important that we understand all the various sources of dual citizenship, because that inevitably colors our thinking on the issue. Second, I would like to explain why dual citizenship poses no threat to the national community and to rebut some of the arguments you have heard leveled today against the status. And finally I would like briefly to explain how embracing dual citizenship will advance our interests by advancing the entrenchment of democratic values on a global basis.

From the earlier testimony, from Drs. Fonte and Renshon, one might get the idea that dual citizenship arises only among naturalized Americans who retain their homeland citizenship. Nothing could be further from the case; in fact, many cases of dual citizenship are also arising from two other contexts.

Tens of thousands and perhaps hundreds of thousands of native-born Americans are now acquiring additional citizenships on the basis of their ancestry. These Americans largely hail from well-established, fully assimilated immigrant communities. Many thousands of native-born Americans, for instance, have acquired Irish citizenship on the basis of even just a single grandparent's roots in Ireland.

Many other native-born Americans have similarly acquired Italian, Greek, British and Israeli citizenship while they remain Americans living in the United States. These Americans are seeking to solidify their ties to their ancestral homelands at the same time they remain good Americans in every sense of the term.

Dual citizenship is not just about new immigrants from countries such as Mexico. It is now a deeply pervasive phenomenon.

The other major source of dual citizenship about which we've heard nothing today results from the birth to parents of different nationalities, one of whom is American. In the face of globalization, this source of dual citizenship is also dramatically on the rise. In this context, dual citizenship is about sustaining the identities of one's own parents. To deny dual citizenship in such cases is to force children to choose between their parents' identities. Again, this phenomenon is increasingly pervasive and cuts across nationalities.

It is not in any way a problem of assimilation. In these cases, we are talking about the children of Americans. These sources of dual citizenship put a different face on the phenomenon. As you contemplate legislative action on the subject, I would ask you to contemplate these dual citizens as well as those who acquire the status in the process of naturalization.

Second, even for those who do acquire the status through naturalization, dual citizenship imposes none of the dangers asserted by the other witnesses here today. With the minor exception of service in senior Federal Government positions, dual citizenship poses no concrete harms. Of course, dual citizenship reflects continuing ties to a country of origin, but that is a part of the great American tradition of pluralistic identities. The citizenship tie by itself makes an individual no more likely to do the bidding of another government than the U.S. political system.

In the era before wide acceptance of dual citizenship, ethnic communities have worked within the U.S. political system to advance the interests of their homeland, as surely all Members of this Committee have experienced firsthand. Irish Americans, Jewish Americans, Italian Americans, Armenian Americans, Greek Americans, Polish Americans—the list is almost as long as the list of the nations of the world. All of these American communities have historically lobbied and voted in ways calculated to benefit their countries of origin.

If “hyphenated Americans” can undertake such political action without threatening our system, surely the system can absorb the political empowerment of “ampersand Americans,” nor would the maintenance of origin nationality retard the culture assimilation of new Americans. In the contemporary context, dual citizenship has emerged as a way of expressing one’s continuing homeland identity. Maintaining alternate Italian or Irish citizenship is akin to membership in the Knights of Columbus or the Order of Hibernians. It has become a way of saying who we are.

Finally, accepting dual citizenship advances U.S. national interests on a global basis. Many dual citizens will remain politically active in their homelands even after they become Americans. Through dual citizenship the United States now enjoys a direct voice in the politics of other countries. I do not mean that such individuals will crudely do the bidding of the United States in those countries, but such individuals as Americans will surely work to sustain and entrench constitutional democratic systems in their countries of origin. Having absorbed our political traditions in the process of becoming Americans, dual citizens will be able to put them to work back home. That serves our national interests in advancing the global cause of democracy.

In closing, Mr. Chairman, I would like to suggest briefly that the politics of dual citizenship also cuts against any legislative action on the subject. It is remarkable how little opposition has surfaced in this country to dual nationality in the face of the quiet explosion and the number of dual citizens. That indeed may be explained by the fact that dual citizenship is increasingly commonplace. More and more Americans have nephews and nieces, siblings and other family members, friends, neighbors and coworkers who are dual citizens and also good Americans.

This is not an immigration issue, this is a matter of how Americans, many of them native born, are living and connecting in a new world. The maintenance of additional citizenship ties is not a problem that needs fixing. I would urge you not to take action against those who have or would like to acquire dual citizenship.

Thank you for considering my views on this subject.

Mr. HOSTETTLER. Thank you, Mr. Spiro.

[The prepared statement of Mr. Spiro follows:]

PREPARED STATEMENT OF PETER J. SPIRO

Good morning Mr. Chairman, Representative Jackson Lee, and Members of the Subcommittee. Thank you for the opportunity to testify before you today on the issues of dual and birthright citizenship.

For the record, I am Rusk Professor of International Law at the University of Georgia Law School, where I teach subjects relating to immigration and international law. I am a former law clerk to Judge Stephen F. Williams on the U.S. Court of Appeals for the D.C. Circuit and to Justice David H. Souter of the Supreme Court of the United States. I have also served as an Attorney-Adviser in the Office of the Legal Adviser, U.S. Department of State, as well as Director for Democracy on the staff of the National Security Council. I was a recipient of a 1988–89 Open Society Institute Individual Project Fellowship to study the law of U.S. citizenship. I was a participant in the 2001–02 German Marshall Fund project on dual citizenship, and have written widely on issues relating to citizenship and nationality.<sup>1</sup>

The last fifteen years has witnessed a dramatic increase in the number of individuals globally who hold more than one nationality, and the United States has been no exception to this trend. Where dual citizenship was once condemned by most countries of the world, and was largely an anomaly insofar as it was tolerated at all, it is now accepted by a growing majority of states.

There is something about dual nationality that seems to provoke a reflexive distaste. Some Americans might be astonished, and perhaps appalled, to learn of dramatic trends toward the near-complete toleration of dual citizenship. But that astonishment and opprobrium will not suffice to justify the suppression of dual nationality. Such disfavor is no more than an echo of a time in which dual nationality did pose a serious threat to the peace of nations. As that threat has evaporated, accepting dual nationality may now be in the affirmative national interest—by way of facilitating the global dispersion of democratic values—as well as a matter of affirming the full breadth of individual identity. It is, in any case, too late for the entrenchment of dual nationality to be reversed. Dual nationality has become a fact of globalization.

It has not always been so. Nationality was once a singular characteristic. A defining feature of nation-states and modern international relations has been the exclusivity of national identification and the notion that individuals should have one—and only one—nationality. Just as the nation-states of the 19th and 20th centuries carved up the world's territory to the end that all was spoken for but none shared, so too did they try to allocate the world's population.

And they had some success: Although migration has always resulted in some cases of dual nationality, until recently dual nationality remained an anomaly, a status disfavored to the point that it was considered immoral. The venerable American diplomat George Bancroft observed in 1849 that nations should “as soon tolerate a man with two wives as a man with two countries; as soon bear with polygamy as that state of double allegiance.” In 1915, Teddy Roosevelt derided the “theory” of dual nationality as “a self-evident absurdity.” Dual nationality was thought to represent an intolerable division of the loyalty owed to one's country. Almost all states canceled citizenship upon naturalization elsewhere; until the late 1960s, U.S. law imposed a hair-trigger standard on dual nationals under which American citizenship was forfeited for so much as voting in another state of nationality.

<sup>1</sup> See, e.g., Questioning Barriers to Naturalization, 13 *Georgetown Immigration Law Journal* 479 (1999); The Citizenship Dilemma, 51 *Stanford Law Review* 597 (1999); Dual Nationality and the Meaning of Citizenship, 46 *Emory Law Journal* 1411 (1997); Political Rights and Dual Nationality, in *RIGHTS AND DUTIES OF DUAL NATIONALS: EVOLUTION AND PROSPECTS* (David Martin & Kai Heilbroner eds., 2002); Mandated Membership, Diluted Identity: Citizenship, Globalization, and International Law, in *GLOBALIZATION AND CITIZENSHIP* (Alison Brysk & Gershon Shafir eds., 2003); Embracing Dual Nationality, in *Dual Nationality, SOCIAL RIGHTS AND FEDERAL CITIZENSHIP IN THE U.S. AND EUROPE* (Randall Hansen & Patrick Weil eds., 2002).

But this antipathy toward dual nationality is fast eroding, and the incidence of dual nationality is now growing at an explosive pace. Today, many are born with dual nationality, the product of binational parentage. Others acquire dual national status with new citizenships, retaining birth citizenship upon naturalization in another country. In both cases, states are moving to recognize, rather than to quash, the retention of other nationalities. Some “sending” states (that is, states with high emigration) are actually encouraging the acquisition of other nationalities. Mexico, the Dominican Republic, Italy, India, the Philippines, and Thailand are among many recent additions to the list of those countries allowing birth citizens to retain nationality when they naturalize elsewhere.

Even in most “receiving” countries, including the United States, the quiet rise in dual nationality has attracted little controversy; the prospect of millions of dual Mexican-American nationals concentrated on the southern border, no less, has failed to provoke any policy initiatives for deterring dual nationality. As globalization fuels migration, and states no longer attempt to suppress dual nationality, that status is now almost commonplace. Though some still decry the status, these opponents have failed to attract any significant public attention or following.

#### ROOTS OF DISFAVOR

To the extent that popular distaste for dual nationality can be elaborated into an argument, it usually hinges on the impossibility of divided loyalties. In the popular mind, dual nationality has been loosely identified with shadowy fifth columns and saboteurs.

The historical explanation is far more prosaic. The origin of the norm against dual nationality had nothing to do with spies and little to do with loyalties; rather, it was rooted in the intractable challenges that dual nationals posed to the institution of diplomatic protection. In the old world, the rights of individuals depended entirely on nationality, and sovereigns could do as they pleased with their own. With respect to a dual national, the right of one state to protect its citizens from mistreatment by another ran up against the other state’s well-established sovereign discretion over its own nationals.

Disputes over the treatment of dual nationals often posed serious irritants in bilateral relations of the 19th and early 20th centuries. At one time or another, such disputes were central to U.S. relations with all the major European powers.

A frequent cause of such disputes was the refusal of the “sending” states of the day (including Great Britain, Italy, and the German principalities) to recognize the capacity of individuals to transfer nationality—that is, to abandon their original nationality and become Americans. For instance, immigrants who had naturalized in the U.S. were, during visits to their homeland, prosecuted for failing to satisfy military service obligations in their country of origin. U.S. diplomats would attempt to shield Americans from such imposition against the vigorous objections of the other country of nationality.

Whether deserving of protection or not, dual nationals posed an intolerable threat to relations among states for whom warfare was often a viable policy option. The War of 1812 was in large part provoked by Great Britain’s attempt to enlist U.S. citizens whose naturalization it did not recognize—in other words, a problem of dual nationality—and U.S. foreign relations compilations for the 19th and early 20th century are replete with high-level disputes relating to dual nationals. By way of a solution, the U.S. negotiated treaties (including the so-called Bancroft conventions of the 1860s and 1870s, negotiated with several German and Scandinavian countries) providing for the attribution of sole U.S. nationality for immigrants, with a reversion to sole original nationality upon permanent return to a home country. These bilateral arrangements found a backstop in U.S. nationality law, under which a variety of acts (including voting, holding office, serving in the armed forces, or naturalizing in another country) resulted in the automatic loss of American citizenship.

Through the middle of the 20th century, dual nationality in any sort of active sense was thus effectively prohibited under U.S. law. But this regime (also adopted by a vast majority of other countries and not significantly softened until the last decade) had nothing really to do with loyalty or allegiance. In some cases, Americans holding passive nationality (through parentage) in Axis nations simply chose the other side when it came to military service, but with little complication (they simply lost their U.S. citizenship in the act of enlisting elsewhere). There appears not a single notable instance of a dual national having engaged in espionage—perhaps not surprisingly, as any real spy would be foolish to advertise the competing attachment.

## POSSIBLE AND DESIRABLE

If the rule against dual nationality was founded in issues of diplomatic protection, that foundation has been washed away. In today's world, of course, sovereigns cannot do as they please with their subjects—that's what human rights are all about. Other countries now protest the treatment of individuals regardless of nationality. Against this backdrop, dual nationals present little more of a threat to bilateral relations than do mono-nationals. In contrast to the 19th and early 20th centuries, it is today unlikely that a dual national could by fact of his or her status rupture diplomatic relations between states. Indeed, there may be some benefit to encouraging the maintenance of dual nationality, at the same time that accepting the status allows individuals to realize their complete identities.

Objections to dual citizenship are sometimes posed in terms of the possibility of diluting full civic engagement in more than one country; in terms of the difficulty of following different cultural traditions; and in terms of the possibility of conflicting attachments and loyalties. In fact, dual citizenship poses few problems along any of these metrics. Indeed, accepting dual citizenship is now not only in the interest of many individual Americans but also in the interest of the nation as a whole.

## ENGAGEMENT AND KNOWLEDGE

First, individuals can be fully engaged and knowledgeable citizens of more than one country. Political and civic capacities are not a zero-sum proposition. All of us have associational involvements aside from our participation in national affairs as citizens, and it has never been thought that such additional memberships detract from citizenship. Quite the contrary. Involvement in state and local politics does not preclude responsible participation in national processes. Likewise, participating in the affairs of another country does not categorically preclude responsible participation in the affairs of this one. Of course, if one spends all one's time at work, or on church affairs or volunteering for the Red Cross, or on local matters, there may be little time left over for national politics—the same might hold true where a dual national concentrated his or her energies on the other country of nationality. But we don't cancel the citizenship of the Red Cross volunteer; the incapacity objection against dual nationality thus falls short. Dual citizens can be responsible participants in both countries of nationality.

Dual citizens can also, perhaps even more clearly, remain informed participants in multiple polities. The communications revolution has settled that question. The Internet now provides easy global access to local media, so that even the isolated individual can stay in touch with homeland developments. Of course, most emigrants tend physically to congregate in some forum (often living in the same neighborhoods in their country of settlement). In practice, the channels of information are multiple, and sometimes almost as dense as they would be back home.

## MAINTAINING DIFFERENT TRADITIONS

If the question here is whether individuals can follow two different cultural traditions, it is beside the point. Mono-national Americans follow vastly different cultural traditions among themselves. It is not a requirement of U.S. naturalization (as it was until recently in Germany) that one have culturally assimilated; there is no shared American canon (an equivalent to Schiller, Goethe, and Wagner) that is essential to the American identity. Of course, one can—many do—continue to follow the cultural traditions of one's homeland even if one terminates the formal citizenship tie to that country. That, indeed, is a part of our national tradition.

It would be quite another thing simultaneously to maintain different political traditions. One can hardly be an old-fashioned monarchist and a democrat at the same time. To the extent that citizenship is mostly about political rights (that is what marks the primary difference between the status of permanent residents, aliens, and citizens), the political traditions argument might have held sway against immigrants from the Sicilian village or the Lithuanian shtetl. But this objection has largely been overtaken by the global trend in favor of democratic governance. Old-fashioned monarchists have gone the way of the dodo bird, and understanding of basic democratic governance is now nearly universal. There are, of course, some old-fashioned dictators still around. But those who hale from such countries do not typically subscribe to totalitarianism. Even when they wish to retain their homeland citizenship, it is out of attachment to the country, not to the political system. Of course, most who emigrate from repressive political systems are doing so precisely because they oppose their homeland regimes. There is only one political tradition today, and dual nationals will be as much a part of it as their mono-national counterparts.



## THE POSSIBILITY OF CONFLICTING "CORE" ATTACHMENTS

That leaves the most prominent contemporary objection to dual nationality: the specter of an electoral fifth column. As the political columnist and ardent dual-nationality critic Georgie Anne Geyer wrote of Mexico's recent acceptance of dual-nationality status (which could, at least in theory, create a population of several million dual Mexican-American citizens), it "creates a kind of Mexican political lobby of newly enfranchised citizens of Mexican descent whose cultural allegiance would remain in Mexico." Similarly, the restrictionist Federation of Americans for Immigration Reform (FAIR) claims that the Mexican government is "attempting to maintain the allegiance of a huge voting bloc in U.S. elections."

But to what end? Globalization and the end of the Cold War have greatly reduced the number of issues on which states suffer distinctly conflicting interests. On trade issues, for example, Mexican national interests in most cases coincides with the interests of American consumers (leaving aside the improbability that dual nationals would command significant legislative representation). In that case, can it be deemed somehow against the "national" interest to vote in a way calculated to benefit another country?

Of course, the citizenship tie will hardly be determinative of voting behavior. Americans often vote with an eye to the interests of their ethnic community; indeed, that is at the core of our political tradition. Mexicans who naturalize as U.S. citizens and who abandon their Mexican nationality in the process (which used to be the case by operation of Mexican law) could, of course, continue to vote Mexican interests even in the absence of the formal link. On the other side, it seems vastly to overestimate the current significance of citizenship to assume that an individual who retains alternate nationality will necessarily vote accordingly. Citizens are hardly a docile herd, ready unthinkingly to do the bidding of their governmental masters under solemn oaths of loyalty. Emigrants, especially, tend not to accept the command of homeland rulers, and their political conduct is likely to be driven more by other interests than those of their alternate nationality.

## DUAL CITIZENSHIP IN THE INDIVIDUAL AND NATIONAL INTEREST

Dual nationality is not only possible; it poses affirmative benefits. This is true whether one considers the issue as one of national interests or of individual rights.

From a national interests perspective, dual citizenship presents a tool in solidifying the global reach of our constitutional values. A naturalizing alien who gives up his or her original citizenship is limited in the extent to which it is possible thereafter to influence the political processes of the homeland. But that seems counterproductive to the American national interest insofar as we may want him to exercise such influence. Naturalizing aliens are likely to absorb American democratic mentalities. If they maintain dual citizenship, they will be able to put those democratic tendencies to work back home. One can plausibly assert as evidence that the participation of dual nationals of Latin American and Caribbean countries resident in the United States has been a significant factor in successful democratic transitions. So even a traditional policy calculation of dual nationality points to accepting dual nationality.

That calculation is stronger still when considered from a rights perspective. Nationality may be an instrument of state control, but it is also an important form of individual identity and free association. Restrictions on dual nationality thus comprise restrictions on identity, as are restrictions on other forms of association; denying a person's full identity both as American and as British or Israeli or Dominican is not so far from denying someone's identity as an American and as a member of a religion or political group or even a family. The last category is especially important in this context. For those born with dual nationality to parents of a different nationality, a rule against dual-national status forces the child to choose between the two. In the absence of any significant cost to society in the maintenance of dual nationality, forcing that choice—and the loss it may well represent to the individual—seems unjustifiable.

Here to Stay

And so what of such solemn terms as "loyalty" and "allegiance" that have tended to drape discussions of dual nationality? National citizenship may now resemble something akin to membership in other groups—religions, corporations, localities, and the innumerable other elements of civil society. Nationality no longer defines individual identities in the way that it used to, and perhaps nations can no longer jealously demand that their membership remain a monogamous one. Maintaining membership in another national community may have emerged to be no more threatening than maintaining membership in the Catholic Church, the Knights of Columbus, the Sierra Club, or Amnesty International.

The deeper significance aside, it seems clear that multiple nationality is here to stay. U.S. law now fully tolerates the status. Americans who naturalize elsewhere retain their U.S. citizenship unless they really want to renounce it (a practice now protected under constitutional rulings of the U.S. Supreme Court); foreigners who naturalize in the U.S. may retain their original nationality, to the extent permitted by the country of origin (the oath of naturalization, under which new citizens are required to renounce absolutely allegiance to foreign powers, has never been enforced). Together with those born with dual nationality, the number of dual nationals is growing dramatically. It is remarkable how little opposition has surfaced in this country to dual nationality in the face of this quiet explosion. That, indeed, may be explained by the fact that dual citizenship is increasingly commonplace, and that more and more Americans have nephews and nieces, siblings and other family members, friends, neighbors and co-workers, who are dual citizens and also good Americans. And more Americans of a broadening range of national origins are themselves acquiring the status, not just among new immigrant groups, but including many among those whose Irish, Italian, Jewish, and British ancestors came to the United States long ago.

Nor is there any clear mechanism available for policing against multiple citizenship even if the will emerged to undertake some sort of enforcement action. The Supreme Court's protection of the rights of American citizens to retain their citizenship even if they acquire an alternate citizenship effectively precludes legislative action against the status. For the United States to require the termination of original citizenship upon naturalization as an American would present an administrative nightmare, and deter the assimilation of many individuals who are already in our midst as permanent resident aliens. On the contrary, we should be welcoming new Americans even as they maintain their homeland ties in the great American tradition of pluralist identities. That, in any case, is the future we face. Thank you for this opportunity to present my views on this important subject.

Mr. HOSTETTLER. At this time we'll turn to questions by Members of the Subcommittee.

Dr. Renshon, what problems are posed when an individual attempts to carry out the responsibilities of being a citizen in two countries? I would especially like for you to possibly answer it in the context of the example that you made in your testimony—I'm trying to recall it here, that you talked about a Juan Hernandez as being named the first American to serve in a Mexican President's cabinet.

You went on to say, according to your testimony, he wants Mexican Americans in the United States to think, "Mexico first. I want the third generation, the seventh generation, I want them all to think Mexico first."

If you could potentially elaborate on some specifics that you think might—issues that Mexico might be considered first politically and then, secondly as an aside, I guess maybe to answer first—and maybe you don't know the answer to this question—but could Mr. Hernandez have been a member of the President's cabinet in Mexico if he was not a citizen of Mexico?

Mr. RENSHON. I don't know the answer to your second question but let me backtrack first to the general question.

When we talk about emotional attachments, I'm trying to get across the point that we're talking about a rough preponderance. I think John Fonte used the term complete and unswerving, sort of the idea of the 100 percent American. That's not my particular point of view.

What I'm trying to say is that what we need are people who, on balance, are tilted toward their American nationality. Now that percentage will differ with certain people, it will differ over time, but what we want to do is bind people over time to the American

political system. And I think what we do and what we don't do helps to solidify those attachments.

I think when you allow people to vote in countries other than the United States—and, remember, when you're talking about voting in another country, you're not just talking about going and pressing a lever; we now have the phenomenon of governments sending their representatives to barnstorm in the United States to organize a campaign in the confines of the United States, so it's a real process which is ongoing.

I quote in the presentation a piece by Robert Weisberg, who's a political scientist; and one of the things he studied, using the national election statistics, was that the act of voting itself cemented people to the political process regardless of whether they won or lost. Usually we think if you win the election, you're a happy camper. But what his research showed was that simply participating in an election was itself emotionally cementing. Well, if it's true for Americans, it's true for Americans doing that abroad.

So my point is simply that we have to try in a lot of different ways to try to foster the attachment of Americans. In part, we have to keep them from doing things, and we also have to do certain things to help them along.

This isn't the place to talk about integrating immigrants, but in my book I have a chapter on what we ought to do about that, and one of the things that I suggest is that we ought to have free English for any immigrant who wants to have it. I know there are many people who want to learn, and English is the key route to assimilation, because through that you have experience, through that you have jobs, through that you're a part of the community and you gather up the experience over time that helps you to be more of an American than you are what you used to be. It's a process.

Mr. HOSTETTLER. Thank you.

Dr. Eastman, in your opinion what class of persons did the authors of the 14th amendment intend to include as being, "subject to the jurisdiction," of the United States? For example, what about the children of legal permanent residents, temporary visitors or tourists on tourist visas, temporary workers and illegal aliens.

Mr. EASTMAN. Mr. Chairman, I don't think, as an original matter, their understanding was that it would include any of those classifications, that subject to the full and complete jurisdiction, this allegiance-owing type of jurisdiction that we're talking about meant that they really could have only a single citizenship. And the fact that they were children and therefore owed allegiance through their parents to a different sovereign, whether the parents were here legally or illegally, temporarily or permanently, did not alter the fact that that was the kind of sovereign jurisdiction that was envisioned in the 14th amendment.

And it came up, in particular, in the discussions, debates over ratification and the drafting of the 14th amendment with respect to Native Americans. Even with respect to Native Americans, who in one sense clearly owed at least a derivative allegiance to the United States, their primary allegiance was to their tribe, and the discussion was that that was not sufficient for this mandatory citizenship of the Constitution. And I'll take up an issue on that point

to show what the confusion about citizenship and sovereignty, what impact it can have in light of Native Americans.

In California, for example, we have this great confusion about Indian tribes running gambling enterprises that are otherwise contrary to California law, and soliciting Government monopoly protections for that gaming by weighing in heavily in the State political process and then turning around and claiming exemption from California's campaign finance laws because they're a "sovereign, independent nation" and ought not be subject to those laws. It creates a distorting factor in our politics. That's but one minor example.

The notion that the millions of illegal immigrants in California and Texas and elsewhere on our border are not going to have that same kind of distorting influence if we recognize citizenship here I think, to say that that doesn't give us any concrete arms, I think is to completely misunderstand the nature of the confusion that arises over citizenship questions.

Mr. HOSTETTLER. Thank you.

The Chair recognizes the Ranking Member, Ms. Jackson Lee, for 5 minutes for questions.

Ms. JACKSON LEE. Thank you very much. Mr. Chairman, I'm contemplating what my questions will be to try to bring some sort of order to this line of reasoning.

Let me first of all say that—not that it bears a great weight, but I happen to know Juan Hernandez and Tony Garza, two individuals that you cited, Mr. Renshon. Is that correct?

Mr. RENSHON. I only cited the first, not the second.

Ms. JACKSON LEE. In the article I'm looking at, I see Tony Garza as well.

Mr. RENSHON. I thought you meant in my talk.

Ms. JACKSON LEE. I'm reading your article and since I know both of them, bring it to your attention.

Tony Garza happens to be the Ambassador from the United States to Mexico. I think both Juan Hernandez and Mr. Garza are products of U.S. schools.

But what I wanted to raise is, can I get from Mr. Renshon and Mr. Fonte any concrete problems associated with dual citizenship beyond the sort of nebulous generic "I don't like immigrants" issue dealing with allegiance and assimilation. I'm sure you want to comment on sort of the adjectives that I've utilized, but Mr. Spiro, if you would then expand on your points about the whole issue of assimilation, the whole issue of a new immigrant who wants to just connect to the home country, the ancestral home, and the value.

I don't know if—I don't want to misspeak, but I don't believe that President Karzai of Afghanistan has a U.S. citizenship, but I believe he has a dual citizenship, and I believe that he was trained in Western universities; it might have been European universities. But how beneficial has it been for Chairman Karzai, now President Karzai of Afghanistan—I happen to chair the Afghan caucus—to have that kind of connectedness, if you will, to Western values?

Maybe I should say democratic principles because I wouldn't want to taint his leadership, and he is certainly independent. But he brings a whole lot to the leadership of Afghanistan with the understanding that he has the multiple cultures, so if you can expand on that, if I can ask the two gentlemen to give me some sense.

As I say that to you, let me say this: Someone might comment—and I didn't hear your first comment; I'm putting out fires—but I'm not sure if you responded to the issue of undocumented parents and citizenship children. If you did, would you repeat it for me when you answer? It will give me some sense of your perspective on that.

I'll just say to you gentlemen on this hearing, I start out by saying that I appreciate regular order, but what I would say to you is that I'm lacking in understanding how this makes us secure.

Is this just we want to turn the clock back? We are a nation that has immigrants here and welcomes immigrants in a legal process, so I don't know how you can turn the clock back. I see nothing in your conversation that provides any sense of security or the elimination of terrorists, since Americans can be terrorists who are born of American parents.

I yield to both of you for the answer originally about what's the crisis.

Mr. RENSHON. First, may I start by taking exception to your characterization of not liking immigrants. At least for me, nothing could be further from the truth.

Ms. JACKSON LEE. You have the right. It's a free country. Your presentation gives me the impression.

Mr. RENSHON. It's an erroneous impression.

Secondly, it seems to me—let me get to the question of identification. Psychologically, an identification with a country, a national identification, allows people to weather the storms that they go through; it allows support for the country during hard times. It's in a sense like an emotional bank account which isn't related to a quid pro quo of what can you do for me lately. No government and especially no democratic government can survive solely on what it gives with regard to goodies.

With regard to the concrete form of identification, there are studies that are now coming out of the attachments of immigrants; there are studies done of immigrant children, the so-called 1.5 generation, second generations, and among those questions the question is asked, how they identify. Do they identify as an American, do they identify as a hyphenated American, do they identify as a Mexican or an El Salvadoran or do they identify as Hispanic?

Traditionally what has happened is that over time people have left behind their identification with their country of origin and adopted a hyphenated American identity. And it has gone so far in some cases—I am referring now to a study by Richard Alba, who's at the State University of New York, who studied European ethnic Americans; and what he found is that essentially, for all practical purposes, there's a European identify which is essentially American. Yes, they're Italian and they eat Italian food, and yes, they're Polish and they may have a sausage, but primarily they identify almost 100 percent or 98 percent as Americans. I don't think the same thing can be said empirically of the new generation of Americans that are coming in from abroad.

A very large percentage of the children of immigrants, the 1.5 generation, and even the second generation identify with a title which does not have "American" in it. And that to me—are they running out and throwing bombs? Well, no, that is not the issue

that I am dealing with. I am suggesting that over time the lack of attachment to our national culture will be a severe strain on our civic process and on our civic identity.

Mr. HOSTETTLER. Without objection, Dr. Fonte, you and Mr. Spiro will be able to respond to questions from the Ranking Member.

Ms. JACKSON LEE. I thank the gentleman for his indulgence.

Mr. FONTE. On the first, I want to reiterate what Stan said. I think the whole purpose of what we are saying is precisely because we are a Nation of immigrants, it was precisely because we do want to assimilate immigrants patriotically into the American system that we favor continuing the American tradition. My father was an immigrant from Sicily and so I am very fond of immigrants. And it is because we are a Nation of immigrants that we want to continue this great tradition of patriotic assimilation. It is precisely because we are a multiethnic, multi-subcultural Nation of people from all over the world that loyalty to the United States should be paramount and that people shouldn't maintain loyalty to another country. If we were purely an ethnic Nation like some other nations it would not make that much difference, but it is because we are a multiethnic Nation specifically that we want to continue our great tradition.

This is the position of the American Legion, the position of patriotic assimilation, that people who come here should be loyal to the United States and not loyal to any other nations.

What problems arise is, as Professor Renshon said, if you have large numbers of people in the country whose primary loyalty is not to the United States, that is a problem for any democratic country.

I did want to mention that my comment on complete and unwavering loyalty was a quote from Felix Frankfurter and I will stick with Felix Frankfurter and I will stick with the policies of Franklin D. Roosevelt on this anytime.

Thank you.

Mr. SPIRO. I still did not hear an answer where there were concrete problems with dual citizenship. I think there is an assumption, particularly in Stan Renshon's remarks, that individuals' attachments are a zero sum quantity. I think he just used the term "emotional bank account" as if there were some set limit to our emotional attachments and that attachments to one form of association necessarily detract from attachments to another form.

Now there are contexts involving conflicting belief systems where that is a problem. It is hard to be a Muslim and a Jew at the same time, and that used to be the case I believe with national attachments. In a world where one had the United States alone as a system of constitutional democracy in a world of monarchists and other non-democratic systems that was a problem. So that when John Fonte's grandfather came here it would have been difficult to remain loyal to both—I guess it was the Kingdom of Sicily at time—

Mr. FONTE. No, the Kingdom of Italy.

Mr. SPIRO. Italy and the United States at the same time. Today, of course, democracy is pervasive so that problem of conflicting belief systems and conflicting systems of politics is no longer a prob-

lem, so that one can be a loyal Italian and a loyal American at the same time.

Briefly on Ms. Jackson Lee's question about the example of Mr. Karzai in Afghanistan; American citizens have been crucial in facilitating transitions to democracies in new democratic countries. So that as Dr. Renshon includes in his paper, there are a long list of Americans who played critical roles in transition to democracy in Eastern Europe in high government positions, including as President of Lithuania. And even Dr. Renshon I believe has no objection to that activity on the part of dual American citizens. So that is a very concrete example of how dual citizenship has served our national interest in other systems.

Mr. HOSTETTLER. I thank the gentleman. The Chair now recognizes the gentleman from Texas.

Mr. SMITH. Thank you, Mr. Chairman. Dr. Eastman, let me address my first series of questions to you.

I gather from your comments that you feel getting to what you or I might consider to be the correct interpretation of the citizenship clause of the 14th amendment, that that can be done by Federal statute and does not necessarily require a constitutional amendment. Is that accurate?

Mr. EASTMAN. It is, Representative Smith.

Mr. SMITH. Of course, we know that a statute might be challenged but at least that holds some promise, I would guess.

Mr. EASTMAN. In fact, I don't even think you need a new statute. The existing one tracks the language of the 14th amendment precisely. That person is born in the United States and subject to the jurisdiction thereof. You could have a resolution describing what you understand that to mean.

Mr. SMITH. That was my next question. If you don't need a statute what are the alternatives? One would be a resolution. That raises other questions that I hadn't thought about until today. Do you think the prospect of the correct interpretation would be enhanced or could be enhanced by an Executive Order?

Mr. EASTMAN. Yes, I do. And in fact I think it would have been preferable in the *Hamdi* case itself had the Solicitor General not waited until the Supreme Court to challenge or to use the language of presumed citizen but in fact had addressed that question right back at the initial transfer from Guantanamo to Norfolk. The mere fact that Hamdi was born in Louisiana, even under the strict holding of *Won Kim Ark* doesn't mean he is a citizen. His parents were not here as permanent residents and that would be enough to distinguish that case.

Mr. SMITH. So we have Executive Order, we have Solicitor General opinion perhaps. Statute, resolution, we have other alternatives to underline what Congress' intent is, which we all know is probably determinative in this case.

My next question goes to what do you think the practical impact of the current interpretation of the 14th amendment is? Do you think that increases illegal immigration? Does that act as a magnet for some individuals to come into the country? As I believe, but I wanted to hear your opinion.

Mr. EASTMAN. I believe it is. I think there are many incentives right now that we provide for illegal immigration and this is a very

important one. It not only provides this grant of citizenship to the first generation born here, but as Chairman Hostettler pointed out in his opening remarks, those citizens can turn around and have priority status for bringing in their parents and other relatives as citizens. It is a shortcut around the naturalization process that Congress has set up under its plenary power.

Mr. SMITH. That is what I think as well. As I pointed out, over half the births in Los Angeles now are to illegal alien parents, that says something itself, I would suspect. Another question is why do you think there is a trend around the world toward requiring at least one parent to be a citizen or legal immigrant in almost any civilized country before the child would be automatically deemed to be a citizen?

Mr. EASTMAN. I think, you know, at points during the last century we adopted this idealistic view that war was over, that we had had a couple of wars to end all wars. It never seemed to work. But recently the spate of activity and the conflicts, terrorism and what have you, have demonstrated the real serious threat that comes from not keeping control over citizenship. A number of nations in Europe, for example, are dealing with this question with mass migrations and the notion that you cannot control that as a naturalization policy because people have automatic unilateral claims of citizenship undermines the notion of consent that is at the heart of any political community. And as those political communities start to fray at the edges with these unilateral rather than bilateral claims it is going to have an impact.

Mr. SMITH. I agree with you. Thank you, Dr. Eastman. Let me say that two of our witnesses a few minutes ago referred directly or alluded to the relatively well-known quote by Teddy Roosevelt along the lines that we shouldn't be considering ourselves hyphenated Americans, we should all be considering ourselves as Americans. I hope we get to the point in our country that we do consider ourselves as Americans first, not hyphenated Americans first. I think that will do a lot for our national unity and our sense of oneness that we look for in our country and our society today. I hope we get there some day.

Thank you, Mr. Chairman and thank you all for your participation today.

Mr. HOSTETTLER. I thank the gentleman from Texas. At this point I would like to go to a second round of questions, if I have the indulgence of the members of the panel. Is everyone available for another 10 to 15 minutes? Thank you.

Dr. Fonte, is it possible for Congress to take action short of revoking citizenship to curtail dual allegiance in situations where dual allegiance is not in our national interest?

Mr. FONTE. Absolutely. In fact in the Perez case, there is a famous dissent by Earl Warren who was on the other side who supported the idea that Congress could not voluntarily take—did not have the power to take someone's citizenship away but he did say that Congress had the power to enact legislation if it deemed something particularly harmful. That is why it is in the power of the Congress.

In fact Congressman Hayworth has introduced a bill today that would penalize—the enforcement first legislation—it would penal-



ize people who perform these certain acts that used to be expatriating, such as voting in a foreign election, serving in a foreign army, and so on. This is totally within the plenary power of Congress to do this, to pass this type of legislation.

I also might want to point out that in the legislation, exemptions could be made for national security reasons. So if there is somebody who is the President of Lithuania and is an American citizen and for some particular reason the State Department wants this, there is the exemption within the Hayworth legislation for this. It is entirely within the power of Congress to act.

I would add if Congress does not act, then dual citizenship and dual allegiance are simply going to multiply. So it is almost, at this point particularly when we are discussing the McCain-Kennedy and various immigration bills, it is important for Congress to act now at this particular time, or there will be a major increase in dual allegiance if nothing is done.

Mr. HOSTETTLER. So because we make no penalties, even if we deem that it is not in our national interest to allow these benefits to inure, that is a big reason why the explosion has taken place potentially, not necessarily as a result of a new wave of a new line of thinking but simply because it is easy to do and there is no penalty?

Mr. FONTE. Partly I think that is correct, if we make the rules very clear. We don't want you voting in a foreign election, we don't want you serving in a foreign army and there are penalties, people will stop doing it and dual allegiance will become a moot point and a lot of problems that we have will be eliminated.

People were saying what is the specific problem? Well, we do have the case of Manuel de la Cruz, who was an American citizen, dual citizen. He was elected to the legislature of Zacatecas on the PRD Party. They have a picture of Lenin here. They are advocating an anti-American line. He is working against American interests. There are others doing the same thing.

That is to answer a previous question of what is some specific harm, but the important thing is that now is the time for Congress to do something about this as we are having this immigration debate. We are going to have millions of new citizens and should they be as always in the past patriotically assimilated and only be loyal to the United States, or should they have divided loyalties? That is something that Congress will have to decide this year.

Mr. HOSTETTLER. Thank you. Dr. Renshon, you bring up a lot of interesting points regarding the psychology of the issue, and something I thought of while you were speaking was the notion that in the past, while American citizens may have disagreed with their country, their government, on a particular issue, it was not such that they would actually be in favor of the position of another country or take that position or work toward the goals and ends or the desires of a foreign state, but they would simply disagree.

But if what you are saying is true about the psychology of the situation, we may be seeing a phenomenon take place today where in fact it is that if we disagree with the United States, and we have dual nationality, that we in fact can choose what policy, what philosophy, and actually work against the will, the national interests

of the United States in favor of the national interests of a foreign power. Is that not true?

Mr. RENSHON. I think that is fair to say. Look, it is a natural inclination when you have attachments to somebody, to begin their point of view, to give their point of view a little bit more on the scale and so forth. So it is entirely psychologically natural. It is natural for people coming from other countries to begin their process here by doing that.

I am talking about the socialization over generations of multi-millions. I estimate there are at least 30 to 40 million dual citizens in the United States, people who can be dual citizens, and it is rising. And so we have never had a situation where we have had in absolute numbers so many people with multiple attachments.

If I may just correct Professor Spiro, my friend and debating partner in many instances, I don't think it is a zero sum game. I don't think you are 100 percent American or not an American. I think that over time people are oriented toward the United States as a nationality and it is just a fact of psychological life that people have attachments elsewhere, especially when they are primary. It is not like being a trade-off between being a professor and a father, these are fundamental orientations. And I am not a big believer just in the fact that because democracy is spreading we're therefore in good shape. Consider Russia as a democracy. France has a democracy. Would we like our citizens to be more French? I don't know. Personally I don't think that is true.

So it is a real problem. May I take a moment and speak to another issue that is related?

Mr. HOSTETTLER. Without objection, for an additional minute if you make it brief.

Mr. RENSHON. I will. We're also in a situation where schools are not really socializing students to become American. The level of information about what America stands for, what it is like, its history is by every measure abysmal. And the consequence of that is that when you ask of citizens that they take care of the country, that they have a balanced appreciation of the country, in order to have appreciation you have to have knowledge of both the virtues and the faults. That is how you have appreciation. If you don't have any knowledge of the values and you only have some idea of their faults, there is no reservoir to fall back on.

And so we are bringing people in through our system who are not being prepared emotionally to have the kind of attachment we might like to see. And I am all for the way—by the way, I am all for dual citizenship and having people who are dual citizens go be the president of a country. But what I object to is they are dual citizens and exercise their citizen responsibilities in two places. They come here and are trained in America and go to Lithuania or Bosnia, fine. That is perfectly fine with me. What I don't want are tens of thousands or hundreds of thousands of people from country X doing both at the same time.

Thank you.

Mr. HOSTETTLER. Thank you. At this point I recognize the gentlewoman from Texas for purposes of questions.

Ms. JACKSON LEE. Professor Spiro, let's do a little bit of sparring here and take on some valid issues that have been raised. Frankly,

let me say to Dr. Fonte, you have my 100 percent enthusiastic support about Americans knowing about America, knowing about our history, understanding our values. And I believe our school curriculums fall short in the primary years and secondary years in the knowledge of American history. That is shame on us. I would rather be listening to a hearing that, though it might be out of our jurisdiction, to reorder the entire curriculum to make people both invested in our history and committed to our history and very well versed in it.

But let's respond to again my singular question. I am still grappling with the concreteness of emotionalism and loyalty. So let's look at, if I might—I think this is Justice Felix Frankfurter's words: No man should be permitted deliberately to place himself in a position where his services may be claimed by more than one government and his allegiance is due to more than one.

In the backdrop obviously this was the beginnings of the early migration, the movement of a number of European countries—citizens over to the United States and maybe there was concreteness then. We were still a young country if you will. It was around, if my history is correct, emerging World War I and other conflicts. But let's just try to focus what we're trying to get at.

I am looking at a legislation that was dropped just today and we have got penalties of up to \$10,000, imprisonment for 1 year for individuals who may vote in the election of a foreign state of which persons were previously a subject of, running for elected office in a foreign state in which a person was previously a subject of. I guess we would haul out of office the President of Lithuania, as you have mentioned, and put that person in jail.

Give me a concrete response to their lack of concreteness without any disrespect to the arguments that they have made. I am still grappling with what is the issue.

And I guess let me finish on this point. I was troubled by the fact that in testimony that was rendered here, I believe Mr. Renshon's response—one of the responses—let me try to be clear—that said, well, we don't have a problem with those who are of the European vintage, except for the comment about our friends in France, but it is the new immigrants maybe from India, maybe from Mexico, Latin American countries, maybe from Africa. I take offense to that, and the reason why I take offense from that is because I have buried soldiers who are of that heritage who would knock down others to go and fight for their country. I think we could take a poll or census of soldiers in Iraq and Afghanistan and we would find high numbers of individuals who may not be dual citizenship but heritages come from those particular countries. So I take offense with the suggestion.

Help me out with a concrete response to what I believe has not been concrete. Is there a danger? What danger are we facing? Because let's fix the danger. And is it warranted to have people placed in jail for some of the offenses that I just said to you in the legislation that was dropped today dealing with dual citizenship?

Mr. SPIRO. I think you are absolutely correct to put the statements of somebody like Felix Frankfurter into historical context. So that at the time that Frankfurter was writing his opinion in the Perez case, which John Fonte referred to, that may have been an

appropriate perspective on dual citizenship. At that time it may have posed a threat to the national interests of the United States. It may have been a question of conflicting belief systems and it may have posed the danger of embroiling the United States in international controversies to allow American citizens to participate politically in other countries.

That is no longer the case today. In Dr. Fonte's written statement there are these fascinating parallels between the position of the Mexican government to its communities in the United States today and the position of the Italian government to its community in the 1930's in America. Interesting parallels but those are completely different worlds. We ended up in a war with Italy in a matter of years and that obviously is not going to happen with Mexico today.

I think it would be a terrible idea to impose criminal penalties on the exercise of dual citizenship and I think John is a little too sanguine to believe that everybody would lie down and obey the law. You would end up with prosecutions which I think would show the foolhardiness of such legislation.

So, again I'm not sure what the problem is. At the same time that I see real benefits from an individual perspective and also from a national perspective—

Ms. JACKSON LEE. If I might, do you see any danger? Do you see us being set up, if you will, for the numbers of terrorists roaming through with dual citizenship? Obviously, you are not an expert on terrorism, but I welcome your thoughts on this.

Mr. SPIRO. It is absolutely not a security issue, and anybody who is thinking about undertaking a terrorist act in this country would be foolish to advertise the alternate allegiance. There is not a single prominent historical case of a dual citizen undertaking acts of espionage or terrorism against the United States.

One last point, Dr. Renshon notes there may be as many as 40 million dual citizens in the United States today. By way of concrete problems we have heard maybe three or four individual cases out of those 40 million that might arguably pose some issue of loyalty or allegiance.

Ms. JACKSON LEE. Thank you.

Mr. HOSTETTLER. I thank the gentlewoman. At this time we will move to a third round of questions if you have that time available to you. There are a couple of us and this is a very interesting subject. I would like to at this point recognize Dr. Fonte, who is pregnant with thought with regard to the last response.

Mr. FONTE. Yes. I was—Peter was saying the situation was different in 1958 with Frankfurter and that we don't have those type of conflicts today. With the end of the Cold War we don't have those type of conflicts. Well, remember 9/11. Today we have more conflicts than ever. Questions of loyalty, conflicts not only between States but within States in the post-9/11 world. Questions of loyalty, of allegiance, of what one believes are absolutely paramount, and we have more conflict than we have ever had. So we have more potential for conflicts and questions of dual allegiance than ever in the past.

And I want to reiterate, the legislation we're discussing, which is the J.D. Hayworth legislation, specifically says that exemptions

can be made if this serves the interests—the national security interests of the United States are served if someone takes a seat in the Mexican government or the government in Nigeria or the government in Finland or any place else. If it serves the national security interests of the United States, exemptions could be made. So this is not simply rounding up President Karzai and throwing him in jail. But those are the two main points that I wanted to answer.

Mr. HOSTETTLER. Thank you. Dr. Fonte, once again it is often said that we are a Nation of immigrants. This being said, how does dual citizenship negatively impact our unique Nation, one that is built on political loyalty rather than on race, ethnicity, or creed? And to follow on that, do you have information that, in fact, dual citizens'—by and large the preponderance of their political activity in other countries are in the national interests of the United States or is it in the national interests of the foreign country? Is their political activity in the United States more to the benefit of the United States or foreign country?

Mr. FONTE. Well, the second question first. I don't know if we have any concrete data. That would be extremely interesting. It would cost some money, but a survey of the views of, say, Mexican dual citizens participating in governments, in Mexican politics and people in Mexico. Because many of the participants in California are members of the PRD, which is the anti-American party. Others are also of course in President Fox's pro-American party. There are differences. I don't know of any survey data but it is clear there are people on both sides of the fence. But in either case the emphasis is the attachment and the time and the emotion is toward the foreign state and not toward the United States.

And that is where your first question was as a Nation of immigrants. I think we are a Nation of immigrants, but we are a Nation of assimilated immigrants. We're not really a Nation of immigrants; we're a Nation of assimilated immigrants with loyalty to the United States.

Now if we were all of one ethnic group, say all of Anglo descent, then everybody would know who an American was. If you were blond, blue eyes, you're an Anglo, you're an American. That is not the case. To be an American is to be loyal to the American political constitutional order. So we are a civic Nation, a Nation that is held together by civic bonds, not by ethnic bonds.

As I mentioned in my written material, we had a war about this in 1812 with the British, who believed once an Englishman always an Englishman. They had an ethnic basis for citizenship. Germany had an ethnic basis for citizenship. You were a member of *Das Volk*, you were a member of the German people. You were a German citizen. Even if you were living in Argentina for 200 years and only spoke Spanish, spoke no German, had no connection with German culture, could read not a word of German, you would still be considered under the old German immigration system a citizen of Germany. That was a pure ethnic Nation.

I say in my paper, I am worried that the Mexican government is adopting the ethnic view, once a Mexican always a Mexican. To the seventh generation is what Hernandez said, and Mussolini also said to the seventh generation. That was the reference of the comparison.

This is ethnic citizenship. People saying you are of this race and you have to stay this race and you have to stay with our country. That is not the way we do things in America. If we accept dual allegiance, we will be heading in that direction.

Mr. HOSTETTLER. The Chair recognizes the gentlewoman from Texas for purposes of questions.

Ms. JACKSON LEE. Thank you very much. I was just meeting with the national PTA Association who were telling me that they were very actively engaged in accepting children that were evacuated from Louisiana, Mississippi, and Alabama. Professor Spiro, you recall there was a debate about refugees versus evacuees, and it brings to mind that labeling people sometimes doesn't generate positive discussion.

So I want to raise with Dr. Fonte, I want to bring attention to you, again I bring up the danger and the concreteness and maybe I missed it.

Does the presentation that both—the three of you make also include denying the citizenship of children born of undocumented aliens, individuals here in this country? Is that correct, Dr. Renshon?

Mr. RENSHON. I haven't addressed that at all.

Mr. EASTMAN. I have.

Ms. JACKSON LEE. Thank you, Dr. Eastman. Then let me go to you for concreteness. Many of us who come from a certain region are probably more apt to be interfacing with that population than not, and what I have seen is a very strong attempt of assimilation that has constantly been the history of this country, either by precedent and/or subsequently by statute, that if you are born in the United States you are a citizen. As I indicated in my opening remarks, for a long period of time we had nothing. So give me succinctly the danger of stigmatizing individuals who are born under the flag of the United States of America.

Now, let me acknowledge that we have, again as I said, a broken immigration system which may lead people to believe that there is a purposeful effort of making sure children are born here in the United States. But putting that aside, what is the danger of giving to citizens their birthright of being born on this soil?

And Professor Spiro, tell me how do you respond to Dr. Eastman once he makes this comment? I'm really trying to find the legislative response, if necessary, to the danger or the undermining of this country. I think that is why we're here, what are we here for. There must be some danger. There must be some threat to the existence of America. Dr. Eastman, what is it?

Mr. EASTMAN. Representative Jackson Lee, I am happy to address that. I think there are two levels of threat, one very specific but one more global and principled. And the notion of birthright citizenship, by being born on the soil I become a subject of the country in which I am born, is a throwback to an old feudal order, that we are the king's subjects or we are the government's subjects, and that was repudiated in our own Declaration of Independence. We set up governments based on consent. It is a bilateral consent. You can't come here and claim citizenship without us agreeing to it, nor can we make you citizens if you don't want it. It is bilateral consent. This notion of consent that we have in the political regime

is critical to our understanding of our regime of being one of civic duty, rights and obligations and not one of ethnic definition. And that, I think, is rather critical.

What you are talking about is an entire class of people that have not been involved in that consent relationship, but have nevertheless through their parents come here and claimed something that we have not agreed to. That is kind of—and over time that radical change in our understanding of our own political system cannot but help to undermine the strength of that system.

More specifically, in southern California we have a huge problem, and I suspect you have it in Texas as well, people who have dual nationality committing crimes, preying on illegal immigrant communities, which is a terrible thing, and then fleeing the jurisdiction to Mexico in order to avoid prosecution. And because they are Mexican citizens they will not be extradited here. It creates an opportunity to commit heinous crimes, cop killing crimes or preying on our immigrant communities, crimes with impunity, and it is made possible because of this notion of dual citizenship. I think that is a very particularized harm, if that is what you are looking for.

MS. JACKSON LEE. Professor Spiro, can you help me with that, please?

MR. SPIRO. Three brief points on the question of birthright citizenship. One is that although Professor Eastman is correct that the Supreme Court has never ruled directly on the subject, I think it is quite clear that the rule of birthright citizenship is constitutionally entrenched. I think a good piece of evidence of this is the Hamdi case itself, that notwithstanding Hamdi's tenuous connection to the United States as an on-the-ground matter, no one in the executive branch of the Government, nor on the Supreme Court—notwithstanding Professor Eastman's very able brief on the subject—got anywhere close to suggesting that he should be deprived of his citizenship as somebody born in the United States. So I think that it is quite clear that as a matter of constitutional practice it is entrenched as a rule.

The second point, and this is forgotten in some of the discussion, is that many of these undocumented parents are very real members of our community. They are not—the stereotype here is of course is of the undocumented alien mother who crosses the border simply to give birth to a child here to take advantage of the birthright citizenship rule. In fact, many of these undocumented mothers have been here for many years and are part of the community and their children will be part of the community. And if we abandon the rule of birthright citizenship, one is talking about establishing an intergenerational caste, a permanently dispossessed class of individuals, which is really antithetical to our citizenship norm of equality.

And finally this is maybe a point that also gets lost in the discussion. If we move away from the birthright citizenship rule, we're looking at an administrative disaster. Under the current rule it is quite simple to determine if somebody is a citizen of the United States. All you have to show is that the person was born in the United States. Imagine a regime in which every individual has to show the immigration status of their parents by way of estab-

lishing their own right to citizenship. Given that our immigration enforcement authorities are already terribly overburdened, do we want to add yet another task to their list of administrative responsibilities?

Ms. JACKSON LEE. Can I just—Mr. Chairman, may I just—would you follow up on—I don't think I was fully understanding Dr. Eastman, though I recognize that California has its own unique issues. But of preying on—I don't know whether you were saying Hispanics, Latins, Mexicans preying on people and running back to Mexico. I mean if it is an isolated local criminal problem that I would join him in saying that we need to give more resources to local police and law enforcement to be able to arrest the criminals. Is he talking about that is what we expect out of undocumented parents' children, that they would be criminals and preying on people? Is that the broad thrust of what is being said here today?

Mr. SPIRO. I mean, I have to admit I'm not sure I took the point either that either dual citizenship or birthright citizenship—it would seem there is a tenuous connection between that and any problems of crime and problems of crime should be handled as problems of crime are handled, which is through greater resources devoted to law enforcement and not through citizenship rules.

Ms. JACKSON LEE. Mr. Chairman, I don't want to put this in the record, but let me conclude by saying we are not a Committee of jurisdiction dealing with treaties, but I would think that—and I find difficulty with some of Mexico's responses and other countries' responses when they harbor criminals and I welcome some review of that issue as to how do we get individuals extradited back who have perpetrated crimes. I think our citizens in this United States are owed that kind of respect and dignity.

But I don't think that the labeling ties in. And the reason why I say so, unfortunately we had a statement being made this morning by Bill Bennett, not particularly related, but I'm just saying how we can get out of sorts with relating different comments. And I don't know what kind of statement he was trying to make, but he said: If you want to reduce crime, you could abort every black baby in this country and the crime rate would go down.

You know, these kinds of statements and statements that suggest that these people are involved in crime are not constructive. But it is constructive, Dr. Eastman, for me to be able to work with you and talk about enforcing the extradition laws to make sure that we don't have that kind of abuse. But I don't see the relationship of this question of dual citizenship and undocumented children.

So with that let me yield back and hope that we will find some other ways of dealing with this question. Thank you.

Mr. HOSTETTLER. Thank the gentlewoman. The Chair wishes to thank members of the panel, witnesses, for being here, for adding to this very important discussion. And I remind the Members of the Committee that all Members will have 5 legislative days to make additions to the record.

At this time, the business before the Subcommittee being completed we're adjourned.

[Whereupon, at 3:40 p.m., the Subcommittee was adjourned.]



## A P P E N D I X

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### MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, SUBCOMMITTEE  
ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

The purpose of this hearing is to examine “birthright citizenship” and “dual citizenship.” The framers of the Constitution did not define “citizenship.” The acquisition of United States citizenship by birth and by naturalization depended on state laws until the enactment of the Naturalization Act of 1790. The Naturalization Act of 1790 established a definition for “citizenship by naturalization,” but it did not define “citizenship by birth.”

Prior to the Civil Rights Act of 1866 and the Fourteenth Amendment, African-Americans were not considered citizens of the United States. In the case of *Dred Scott v. Sandford*, 60 U.S. 393 (1856), the United States Supreme Court held that African-Americans could not be citizens of the United States, even if they were free. According to the Supreme Court, African-Americans were descended from persons brought to the United States as slaves, and the terms of the Constitution demonstrated that slaves were not considered a class of persons included in the political community as citizens.

The Civil Rights Act of 1866 declared that “all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States.” The Fourteenth Amendment declared that “[a]ll persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

In *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), the Supreme Court held that all persons born in the United States and subject to its jurisdiction are citizens. The children of diplomats and the children of hostile occupation forces were excluded because their parents are not subject to the jurisdiction of the United States. *Wong Kim Ark* did not exclude the children of illegal aliens, and the basic holding of this decision has never been reversed.

In recent Congresses, there have been various proposals aimed at excluding the children of illegal aliens and nonimmigrant aliens from automatic birthright citizenship. These proposals have taken the form of amendments to the Citizenship Clause of the Fourteenth Amendment or to the birthright provisions of the Immigration and Nationality Act (INA).

Other proposals would limit birthright citizenship in a way that its proponents believe would not necessitate a constitutional amendment. This approach would *statutorily* define who is born “subject to the jurisdiction” of the United States under the Citizenship Clause notwithstanding the holdings in *United States v. Wong Kim Ark*, *supra*.

I am opposed to restrictions on birthright citizenship. Among other things, these proposals would, for the first time since *Dred Scott*, create a class of persons who are born in American but are not citizens.

Another subject of this hearing is “dual citizenship.” Dual citizenship can arise in several ways. A person may acquire dual citizenship by being born in the U.S., which recognizes *jus soli*, to alien parents whose country recognizes *jus sanguinis*, or by being born abroad to U.S. parents in a country that practices *jus soli*. A U.S. citizen may become a naturalized citizen of a nation that does not require renunciation of other allegiances, or a naturalized U.S. citizen may still retain citizenship in a country that does not recognize renunciation of its citizenship. In deference to the sovereignty of that other nation, the U.S. generally recognizes the dual citizenship.

Some people claim that dual citizenship is a problem because it results in divided loyalties, particularly in the case of a military conflict. It is difficult, however, to assess something as personal as an individual's loyalties. Other people focus on conflicts regarding jurisdictional issues, such as diplomatic protection, and legal duties borne by individuals, such as military service. These may be serious problems in some situations, but they can be managed through such means as bilateral treaties. I am not convinced that there is a need to restrict dual citizenship. Thank you.

RESOLUTION NO. 165 OF THE AMERICAN LEGION, SUBMITTED BY DR. JOHN FONTE

EIGHTY-SEVENTH NATIONAL CONVENTION  
THE AMERICAN LEGION  
HONOLULU, HAWAII  
AUGUST 23, 24, 25, 2005

RESOLUTION NO: 165

**OPPOSE DUAL ALLEGIANCE; ENFORCE CITIZENSHIP OATH**

Commission: Americanism

WHEREAS, The American Legion considers the Oath of Renunciation and Allegiance to be a contract between the applicant for citizenship and the United States government in which the applicant, in return for the benefits and privileges received, agrees to

1. Renounce all allegiance to any foreign state or sovereign;
2. Support and defend the U.S. Constitution and laws of the United States of America against all enemies, both foreign and domestic;
3. Bear "true faith and allegiance" to the United States of America; and
4. Bear arms, perform noncombatant service, or perform work of national importance on behalf of the United States of America; and
5. Take this oath without mental reservation or purpose of evasion; and

WHEREAS, In taking the Oath of Renunciation and Allegiance, the immigrant pledges to transfer their full political allegiance from his or her birth nation to the United States of America; and

WHEREAS, According to immigration experts, the great majority of immigrants applying for U.S. citizenship come from countries that "allow or encourage multiple citizenship;" and

WHEREAS, From the beginning of this Republic, Americans have regarded the principle of dual allegiance as inconsistent with the principles of American constitutional democracy; and

WHEREAS, Many immigrant-sending countries, including Mexico, are actively promoting dual allegiance; and

WHEREAS, To retain allegiance to another constitution besides the U.S. Constitution, is inconsistent with the moral and philosophical foundations of American constitutional democracy, thus violating our core principles as outlined in the Oath of Renunciation and Allegiance; and

WHEREAS, The integrity of the Oath of Renunciation and Allegiance and the integrity of the entire citizenship naturalization process are challenged or compromised by the continuing increase in the number of U.S. citizens who hold multiple national allegiances; and

WHEREAS, The American Legion and the Hudson Institute, an internationally recognized public policy research not-for-profit 501(c)(3) organization, have established a working relationship called the "Citizenship Roundtable" to address concerns about the naturalization process in the United States; now, therefore, be it

**RESOLVED, By The American Legion in National Convention assembled in Honolulu, Hawaii, August 23, 24, 25, 2005, That The American Legion encourage the Congress of the United States to enact measures to enforce the Oath of Renunciation and Allegiance and reject dual allegiance in principle and restrict and narrow its application in practice.**

LETTER TO CHAIRMAN HOSTETTLER AND NATIONAL REVIEW ARTICLE,  
SUBMITTED BY DR. JOHN EASTMAN



CHAPMAN UNIVERSITY

SCHOOL OF LAW

October 5, 2005

Hon. John Hostettler  
Chairman, Judiciary Subcommittee on Immigration, Border Security, and Claims  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairman Hostettler:

Thank you again for inviting me to participate in your important hearing last week on "Dual Citizenship, Birthright Citizenship, and the Meaning of Sovereignty." Before the hearing record is closed, I would like to augment my own testimony in order to respond to several statements made by Representative Jackson Lee at the hearing, and also to address Professor Spiro's contention that revisiting birthright citizenship in the way I suggested would produce an "administrative disaster."

Let me address Representative Jackson Lee's statements first. In her opening statement, Representative Jackson Lee claimed that African Americans were not citizens in the United States at the time of the founding and were, indeed, not even considered whole persons. Though this canard is often repeated, it is demonstrably false. In several states, African Americans enjoyed citizenship status, including the right to vote. Representative Jackson Lee's position is drawn not from the historical record of the founding era, but from the egregiously erroneous decision by Chief Justice Roger Taney in the *Dred Scot* case more than 60 years later.

Representative Jackson Lee was correct to point out that the Constitution's Three-Fifths Clause did apportion representation in Congress according to a formula that added to the whole number of free persons "three fifths of all other persons." Contrary to Representative Jackson Lee's assertion, however, this Clause did not treat African Americans as less than whole persons. Quite the opposite is true. First, the three-fifths calculation applied only to slaves, not to "free persons"—including free blacks. More fundamentally, the formula was an obvious attempt to *limit* the power of slaveholders, depriving them of the full measure of representation in Congress to which they would have been constitutionally entitled had representation been based on population alone. An even stronger limit on the power of slave owners would have been not to count the slave population at all in the apportionment of congressional representation. Under Representative Jackson Lee's formulation, though, such a move to limit the power of slave owners would apparently be interpreted as treating African Americans as not persons at all (rather than just 3/5 of a person), despite its obvious intent to deprive slave owners a larger share of power based on the number of slaves they owned. Ironically, the Fourteenth Amendment followed just this strategy. It eliminated the Three-Fifths Clause, granting representation in Congress based on total population. But it then reduced that representation proportionally for any State that chose to deny the right to vote to some of its citizens. In other words, under the 14th Amendment, those denied the right to vote did not count at all for

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purposes of determining representation in Congress, with the obvious intent of limiting the power of States who would deny to African Americans the right to vote.

These and other false charges against the American Founders have been thoroughly refuted in a scholarly book by my colleague at the Claremont Institute, University of Dallas Professor of Politics Dr. Thomas G. West. The book, Vindicating the Founders: Race, Sex, Class, and Justice in the Origins of America, was published by Roman & Littlefield in 1997, and re-published in paperback in 2001; I commend it to your Committee's attention.

Representative Jackson Lee also made a scurrilous accusation against another of my colleagues at The Claremont Institute, former Secretary of Education William J. Bennett, who serves as our Senior Washington Fellow. Representative Jackson Lee falsely accused Secretary Bennett of supporting the abortion of all black babies in America in order to reduce the crime rate. I attach for inclusion in the Committee's hearing record an article by Andrew McCarthy, published at National Review Online, describing the entire statement made by Secretary Bennett. As even a cursory look at his full statement makes patently clear, Secretary Bennett's position was precisely the opposite of what Representative Jackson Lee attributed to him. Representative Jackson Lee selectively quoted from Secretary Bennett's statement a hypothetical scenario that he immediately proceeded to describe as "an impossible, ridiculous and morally reprehensible thing to do." To attribute to Secretary Bennett the hypothetical proposition itself rather than his conclusion that such a thing would be "morally reprehensible" is quite dishonest, and has no place in the deliberations of a congressional committee.

Finally, at the very end of the hearing, Representative Jackson Lee mischaracterized my own testimony as somehow demonstrating that I believed dual nationals had a greater propensity to commit crime. I said nothing of the sort, of course. What I did say was that Mexican/U.S. dual nationals who do commit capital or other crimes (often preying on immigrant communities here in the U.S. in the process) are better able to flee the jurisdiction of U.S. Courts, returning to Mexico and the protection afforded by their "dual" sovereign not to be extradited back to the United States to face criminal trial and punishment if found guilty. Representative Jackson Lee agreed that something needed to be done to address the point I actually made; I hope my correction of her misunderstanding of my testimony will permit her to join with you to address the very serious problems considered at the hearing.

Let me close by turning to Professor Spiro's concern about the "administrative disaster" that would result if we followed the text of the Constitution's citizenship clause. Professor Spiro stated that under the rule of birthright citizenship, all one has to do is simply show that he was born in the United States to establish his claim of citizenship, presumably by producing one's birth certificate. Were we to apply the Constitution's actual text, however, Professor Spiro stated: "Imagine a regime in which every individual has to show the immigration status of his parents in order to establish his citizenship," a task that he believed would greatly increase the burden on an already overburdened Immigration service. Permit me in response to submit for the hearing record a copy of Yaser Esam Hamdi's birth certificate. Notice that it already includes lines depicting the birthplace of both of Hamdi's parents. His father was born in Mecca, Saudi Arabia, and his mother was born in Taif, Saudi Arabia. Because such foreign birth already raises a presumption of foreign citizenship, it

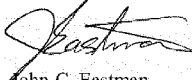
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would be quite simple, as an administrative matter, merely to add a box to the birth certificate to ascertain whether that presumption was rebutted in any given case: "If parent's birth is not U.S., check here if a naturalized U.S. citizen." The parent's claim of naturalization could even be easily verified merely by a requirement that the parent produce his or her naturalization papers. The resulting administrative burden for the Immigration Service would be identical to the "simple" proof already required under a birthright citizenship rule—production of the birth certificate. In short, I do not believe that the specter of an "administrative disaster" is one that should give the committee any cause for concern, nor detract it from pursuing sound naturalization policy within the limits actually specified by the Constitution's Citizenship Clause rather than a more stringent limits erroneously believed to exist.

Please let me know if I may be of further assistance as your committee proceeds to address the issues raised at the hearing.

Sincerely,



John C. Eastman  
Professor of Law\*

Director, The Claremont Institute Center for Constitutional Jurisprudence\*

\* Note: The testimony I provided at the hearing, both written and orally, and the additional information contained in this letter, are my own views and not necessarily those of the institutions with which I am affiliated.

FindLaw WWW.FINDLAW.COM		CERTIFICATE OF LIVE BIRTH		BIRTH NO. 117-1980-058-00393	
L2048855					
1A CHILD'S LAST NAME HANDI		1C SECOND NAME ESAM		5 BIRTH ORDER	
1B FIRST NAME YASER		3 SEX MALE		4 NUMBER BORN SINGLE	
2A BIRTH DATE SEPTEMBER 26, 1980 4:05 PM					
6A PLACE OF BIRTH (CITY, TOWN, OR LOCATION) BATON ROUGE					
6B PARISH OF BIRTH EAST BATON ROUGE					
6C NAME OF HOSPITAL OR INSTITUTION WOMAN'S HOSPITAL					
7A RESIDENCE OF MOTHER (CITY, TOWN, OR LOCATION) BATON ROUGE					
7B PARISH EAST BATON ROUGE		7C STATE LOUISIANA		7D ZIP CODE 70809	
7E STREET ADDRESS OF RESIDENCE 10448 JEFFERSON HIGHWAY APT E					
8A FATHER'S LAST NAME HANDI					
8B FIRST NAME ESAM		8C SECOND NAME FOUAD			
8D CITY AND STATE OF BIRTH (IF NOT U.S., NAME OF COUNTRY) MECCA, SAUDI ARABIA					
8E AGE AT THIS BIRTH 25					
9A MOTHER'S MAIDEN NAME FATTAH					
9B FIRST NAME NADIAH		9C SECOND NAME HUSSEN			
9D CITY AND STATE OF BIRTH (IF NOT U.S., NAME OF COUNTRY) JALIF, SAUDI ARABIA					
9E AGE AT THIS BIRTH 21					
FILED OCTOBER 22, 1980		DATE ISSUED MAY 23, 2002			

THE ABOVE IS A TRUE CERTIFICATION OF NAME AND BIRTH FACTS ON FILE IN THE VITAL RECORDS REGISTRY OF THE STATE OF LOUISIANA, PURSUANT TO LSA — R.S. 40:32, ET SEQ.

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**Andrew C. McCarthy**

NRO Contributor

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September 30, 2005, 11:04 a.m.

**Shameful Attacks**

Bill Bennett stresses our morality...and pays the price.

In the course of a free-wheeling conversation so common on talk-format programs, Bill Bennett made a minor point that was statistically and logically unassailable, but that touched a third rail — namely, the nexus between race and crime — within the highly charged context of abortion policy.

He emphatically qualified his remarks from the standpoint of morality. Then he ended with the entirely valid conclusion that sweeping generalizations are unhelpful in making major policy decisions.

That he was right in this seems to matter little. Bennett is being fried by the PC police and the ethnic-grievance industry, which have disingenuously ripped his minor point out of its context in a shameful effort to paint him as a racist. He's about as bigoted as Santa Claus.

Here's what happened. In the course of his *Morning in America* radio show on Wednesday, Bennett engaged a caller who sought to view the complexities of Social Security solvency through the narrow lens of abortion, an explosive but only tangentially relevant issue. Specifically, the caller contended that if there had not been so many abortions since 1973, there would be millions more living people paying into the Social Security System, and perhaps the system would be solvent.

Bennett, typically well-informed, responded with skepticism over this method of argument by making reference to a book he had read, which had made an analogous claim: namely, that it was the high abortion rate which was responsible for the overall decline in crime. The former Education secretary took pains to say that he disagreed with this theory, and then developed an argument for why we should resist "extensive extrapolations" from minor premises (like the number of abortions) in forming major conclusions about complex policy questions.

It was in this context that Bennett remarked: "I do know that it's true that if you wanted to reduce crime, you could — if that were your sole purpose — you could abort every black baby in this country, and your crime rate would go down." Was he suggesting such a thing? Was he saying that such a thing should even be considered in the real world? Of course not. His whole point was that such considerations are patently absurd, and thus he was quick to add: "That would be an impossible, ridiculous and morally reprehensible thing to do."

Bennett's position, clearly and irrefutably, is that you cannot have tunnel vision, especially on something as emotionally charged as abortion, in addressing multifaceted problems. It is almost always the case that problems, even serious ones, could be minimized or eliminated if you were willing to entertain severe solutions. Such solutions, though, are morally and ethically unacceptable, whatever the validity of their logic. The lesson to be drawn is not that we can hypothetically conceive of the severe solutions but that we resolutely reject them.



because of our moral core.

This is a bedrock feature of American law and life. We could, for example, dramatically reduce crimes such as robbery and rape by making those capital offenses. We don't do it because such a draconian solution would be offensive to who we are as a people. But it is no doubt true that if we were willing to check our morality at the door, if the only thing we allowed ourselves to focus on were the reduction of robbery and rape, the death penalty would do the trick.

We are currently at war with Islamo-fascists, and our greatest fear is another domestic attack that could kill tens of thousands of Americans. The attacks we have suffered to this point have been inflicted, almost exclusively, by Muslim aliens from particular Arabic and African countries. Would it greatly reduce the chance of another domestic attack if we deported every non-American Muslim from those countries? Of course it would — how could it not? But it is not something that we should or would consider doing. It would be a cure so much worse than the disease that it would sully us as a people, while hurting thousands of innocent people in the process.

The salient thing here is the moral judgment. But, to be demonstrated compellingly, the moral judgment requires a dilemma that pits values against values. Remarkably, Bennett is being criticized for being able to frame such a dilemma — which was wholly hypothetical — but given no credit for the moral judgment — which was authentically his.

Statistics have long been kept on crime, breaking it down in various ways, including by race and ethnicity. Some identifiable groups, considered as a group, commit crime at a rate that is higher than the national rate.

Blacks are such a group. That is simply a fact. Indeed, our public discourse on it, even among prominent African Americans, has not been to dispute the *numbers* but to argue over the *causes* of the high rate: Is it poverty? Breakdown of the family? Undue police attention? Other factors — or some combination of all the factors? We argue about all these things, but the argument always proceeds from the incontestable fact that the rate is high.

The rate being high, it is an unavoidable mathematical reality that if the number of blacks, or of any group whose rate outstripped the national rate, were reduced or eliminated from the national computation, the national rate would go down.

But Bennett's obvious point was that crime reduction is not the be-all and end-all of good policy. You would not approve of something you see as despicable — such as reducing an ethnic population by abortion — simply because it would have the incidental effect of reducing crime.

Abortion, moreover, is a grave moral issue in its own right. It merits consideration on its own merits, wholly apart from its incidental effects on innumerable matters — crime rate and social security solvency being just two.

"[T]hese far-out, these far-reaching ... extensive extrapolations are, I think, tricky," Bennett concluded. It was a point worth making, and it could not have been made effectively without a "far-out" example that highlighted the folly. Plus he was right, which ought to count for something even in what passes for today's media critiques.

— *Andrew C. McCarthy, a former federal prosecutor, is a senior fellow at the Foundation for the Defense of Democracies.*

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<http://www.nationalreview.com/mccarthy/mccarthy200509301104.asp>

PREPARED STATEMENT OF THE HONORABLE JIM RYUN, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF KANSAS

Part of America's beauty comes from her unity in the midst of diversity. We have been called a Nation of immigrants, but behind this statement is the knowledge that we one-time immigrants have become Americans. The Americanization process is central to creating the unity that is so important as we wage the War on Terrorism.

As Tamar Jacoby, Senior Fellow at the Manhattan Institute, states, "The stakes could hardly be higher. One in nine Americans is an immigrant. Nearly one-fifth of U.S. residents speak a language other than English at home. The number of foreign-born Americans—33 million and growing—now exceeds the entire population of Canada. And in the wake of 9/11, with the nation as a whole thinking harder than ever before about what it means to be American, it couldn't be more important to help these newcomers find a way to fit in."

To successfully assimilate the millions of immigrants in the United States, we must ensure their allegiance to our Founding documents and principles and their desire to become Americans. For over 200 years, we have used the Oath of Allegiance and Renunciation as a gateway to American citizenship.

The Oath of Renunciation and Allegiance is taken by all immigrants as they become citizens, and it is an important pronouncement of fidelity to America and her laws. In taking the Oath, immigrants are reminded of the seriousness of becoming an American citizen and the responsibilities that come with it.

It is problematic that this important pronouncement is not specified by law. The Oath is merely a part of Federal regulations and can be changed at the whim of Government bureaucracy. In fact, on September 17, 2003, the Department of Homeland Security's Office of Citizenship and Immigration Services (CIS) proposed changing the Oath's language. The proposed changes would have transformed an absolute commitment into a conditional statement, thereby weakening the Oath and the meaning of American citizenship.

Because of public outcry, the proposed changes were never implemented, but we should take steps to ensure that future changes could only be made by Americans' elected officials.

During the last Congress, I introduced a bill to place the Oath into law so that only Congress would have the authority to change its language. Congress thought it important enough to adopt a similar amendment in the FY05 DHS Appropriations bill that would restrict any funds in the bill from being used to make changes to the Oath. This amendment will expire October 1, 2005, as we begin the new Fiscal Year.

As a result, it is more important than ever to take renewed steps to protect the Oath. This Congress, I have introduced two bills, H.R. 1804 and H.R. 2513, that would do just that. H.R. 1804 would simply place the Oath in current law, giving it the same protections as the Pledge of Allegiance and the National Anthem. H.R. 2513 would do this, as well as make amendments to the Oath, as proposed by CIS, to clarify the currently awkward language while retaining the historical significance and the five essential components of the Oath. The new language has been approved by various historians and groups, including the Citizenship Roundtable, an alliance of the American Legion and the Hudson Institute and former Attorney General, Edwin Meese at The Heritage Foundation.

Establishing the Oath of Allegiance as the law of the land would remind all Americans—recent immigrants and life-long citizens alike—that pursuing the American dream requires a full-time commitment to citizenship. Our new citizens should not become what Thomas Paine once called the "summer soldier and the sunshine patriot" that shrank from the service of his country in times of crisis. The process of assimilation begins with a clear understanding of what it means to be an American, and no immigration reform can be complete without ensuring that our immigrants are committed to becoming Americans.

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PREPARED STATEMENT OF THE HONORABLE NATHAN DEAL, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF GEORGIA

Mr. Chairman, thank you for holding this important hearing to address the critical issue of birthright citizenship. I am the original sponsor of H.R. 698, the "Citizenship Reform Act" which aims to do away with birthright citizenship by amending the Immigration and Nationality Act. Specifically my legislation would deny citizenship at birth to children born in the United States of parents who are not citizens or permanent resident aliens. The bill grants citizenship to a child born out of wedlock in the United States only if the mother is a citizen or national of the United States or an alien who is lawfully admitted for permanent residence and maintains

her residence in the United States. To date my bill has 45 cosponsors and has received widespread support from those groups serious about reforming our nation's immigration laws.

As you know, any child born in the United States is granted automatic American citizenship regardless of whether or not the baby's parents are legal residents. This is a supposed "right" granted by the Fourteenth Amendment's citizenship clause which states that "all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States." The original intent of this clause was to guarantee citizenship to all freed slaves but has since become an attractive incentive for illegal immigrants.

Some have contended my legislation is insufficient to address the birthright issue, as a restriction on citizenship would require a Constitutional amendment. I do not agree with this assessment. As Dr. John Eastman and numerous other outstanding legal minds have contended, current interpretation of the Fourteenth Amendment is not only misguided but also has profound consequences for the democratic character of our federal government. While the Supreme Court has addressed the issue in passing, it has never squarely dealt with the question of birthright citizenship as understood within the bounds of the Fourteenth Amendment. In the very least, my legislation would force such a decision—a decision which I firmly believe would be found in our favor.

Beyond the legal arguments, it is important to understand the financial consequences of our birthright citizenship policies. An estimated 300,000 babies are born to illegal immigrants in this country each year. As we all know, these children are automatically granted citizenship. The cost of caring for these children is extremely high. For labor and delivery alone, excluding c-section deliveries and any pre- or post-natal care, the cost is between \$1,500 and \$1,800 per child. Under current law the government is often left no choice but to cover these costs. Despite the legal status of the baby's parents, the baby is entitled to all benefits that U.S. citizenship entails, including federal welfare benefits and the right to vote. When that child turns 21, he or she will be able to sponsor his or her parents, and other family members, to the United States under the family reunification provisions of the Immigration and Nationality Act. One quickly comes to realize the costs to our social infrastructure of such an ill-advised policy. It is my belief that in order to begin truly reforming our immigration and citizenship laws, we must start from the beginning by doing away with birthright citizenship.

I would again like to thank the Committee for this hearing and strongly urge it to consider my bill, H.R. 698 as it moves forward on this issue.

## Ditching Dual Citizenship

By William Buchanan

Peter Brimelow was enthralling a Charlottesville, VA audience in his neatly manicured English accent. He was hawking the tale of disaster we reformers all lament, when he suddenly adverted to a moment he's long remembered. Peter was born in England and became a naturalized U.S. citizen in 1994.

Before and after the group recital of the citizenship oath, he was horrified to overhear other oath-takers remark casually that they intended to keep their old passports, send their boys "home" in the event of a draft, and, in general, be loyal to America only when it suited them.

These oath-takers began their sojourn as American citizens with a lie. They took what U.S. law calls the "Oath of Renunciation and Allegiance" (8 U.S.C. 1448) to gain the advantages of American citizenship while neither renouncing their past loyalty nor pledging sole allegiance to America. They became dual citizens.

Fortunately, three steps up the legislated ladder, at 8 U.S.C. 1451, lies a partial remedy. This section authorizes the Justice Department to sue to revoke naturalizations where they've been "procured by concealment of a material fact or by willful misrepresentation."

Regular use of this antidote, moreover, can be counted upon to generate court challenges. These could provide the Supreme Court with a dignified line of retreat from its calamitous and falsely argued 5-4 decision in *Afroyim v. Rusk*. In that decision, the court found U.S. citizenship, whether acquired by birth or naturalization, could only be lost if voluntarily renounced.

But first things, first. Let's see what 8 U.S.C. 1451 can do for us. The place where persons seeking to naturalize are most likely to conceal "a material fact" or make a "willful misrepresentation" is the Application for Naturalization, Form N-400. Applicants might, for example, lie about one-time membership in a "terrorist organization" or check "no" to avoid revealing a conviction for smuggling drugs. Another part of the U.S. Code, 18 U.S.C. 1425, makes false statements here a criminal offense.

But once naturalized, few newcomers ever have their citizenship questioned, let alone revoked. Naturalizers associated with Nazi death camps, however, are an exception. The director of Justice's Office of Special Investigations (OSI), employing 8 U.S.C. 1451, reports his unit has "won cases against 95 Nazi persecutors, stripping them of U.S. citizenship and/or removing them from the country."

Since September 11, 2001, these two sections of the code have also been used against suspected Muslim terrorists. For example, the Justice Department seeks to denaturalize and deport Rasmi Khader Almallah.

Mr. Almallah, it's charged, had a long association with the now-defunct, terrorist-connected Holy Land Foundation. In 1981, he obtained his green card by means of a fake marriage. Thus, says Justice's lawsuit, "defendant procured his permanent residence (and, by extension, his citizenship) by fraud or by willful misrepresentation and concealment of a material fact."

One might reasonably ask why Justice didn't do something in 1981 when Mr. Almallah jumped the turnstile and long before he became a citizen, a father of seven children

and owner of a large chain of carpet stores. But that Mr. Almallah could now be deported illustrates the power and continued viability of 8 U.S.C. 1451.

In a similar case, Fawaz Mohammed Damrah lied about his associations with terror-linked organizations during his N-400 interview. He was found guilty of unlawfully obtaining citizenship in violation of 18 U.S.C. 1425. He was sentenced to two months in jail, four months of home confinement, and three years of supervised release. The court also stripped him of his citizenship pursuant to 8 U.S.C. 1451. On March 15, 2005 the U.S. Court of Appeals for the Sixth Circuit rejected his appeal.

Back to *Afroyim*. Prior to that decision, Congress believed it had a right to summarily strip native-born or naturalized Americans of their citizenship for a whole host of reasons. The goal was to prevent dual citizenship, promote loyalty, and thereby defend American sovereignty.

Since *Afroyim*, dual citizenship has flourished. Recognizing citizenship is power, source countries now promote dual citizenship for their emigrants in an effort to get more of them to become American citizens. They can then marshal their emigrants' political energies for the interests of their (the emigrant's) country. Is this fair? In granting what turns out to be dual citizenship we deliberately bestow upon newcomers the glorious heritage we were born with while they retain the advantages they had in their home country. The Court simply must revisit this ruling.

Numbers prove we're heading in a new direction. In the period 1921-80, there were an average of 151,000 naturalizations per year. By the post-*Afroyim* decade 1991-2000,

however, the rate of naturalizations had more than tripled to 516,000 per year.

The two sections of law cited above point to a partial solution, at least as it relates to naturalization. Every person who naturalizes must take our standard oath of allegiance. This requirement is ancient, going back to the very beginnings of our country. Its antique language is redolent of old verities. It is intended to be a solemn act, a rebirth as awesome as childbirth.

The oath begins: "I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, of whom or which I have heretofore been a subject or citizen;" and ends: "I take this obligation freely without any mental reservation or purpose of evasion; so help me God."

Is the oath just a joke? — a collection of empty words? Or is it a serious undertaking?

Candidates for citizenship should be:

- Required to turn over their old passports immediately before taking the oath.
- Warned that, once they have taken the oath, they may not obtain passports or special privileges in their previous homeland so long as they continue to be American citizens.
- Warned that we will report to their former country they are now U.S. citizens and have renounced their former loyalty and rights.

•Warned that if they obtain passports from, or take an oath of allegiance to, their former homeland, they risk losing their U.S. citizenship as they would be guilty of a "willful misrepresentation" in violation of 8 U.S.C. 1451.

•Warned that if they obtain passports from, or take an oath of allegiance to, their former homeland, they risk arrest, fines, and imprisonment under 18 U.S.C. 1425.

of inestimable worth. Dissolving allegiance to the newcomer's country of origin is much more than a courtesy. With over half a million persons naturalizing each year, it is crucial to maintaining American sovereignty.

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An earlier version of this article appeared in The Washington Times of March 13, 2005 at <http://www.washingtontimes.com/commentary/20050312-102446-7594r.htm>.

These warnings should be delivered during the final face-to-face review of the N-400. Applicants for naturalization should sign that what they have recorded on the form is true. They should sign again that they fully understand and accept the warnings listed above and that Americans and their government are dead serious about this. These warnings should be repeated at the time the old passports are given up just prior to taking the oath.

One more thing. You can't really understand the oath and the warnings if you don't know and respect the English language. It appears that, thanks to indifferent testing and/or pointless waivers, many people who take the oath haven't the faintest idea of what they are committing themselves to. The problem is compounded by the insulting indifference we display when we offer English language training to foreigners. "English as a Second Language" means English as a Second-RATE Language. In America, the language of the Constitution and of Jefferson, Melville, Whitman, Twain, Dickinson, and Hemingway is language second to no other.

U.S. citizenship is an honor. Whether obtained by birth or naturalization, it is a gift

